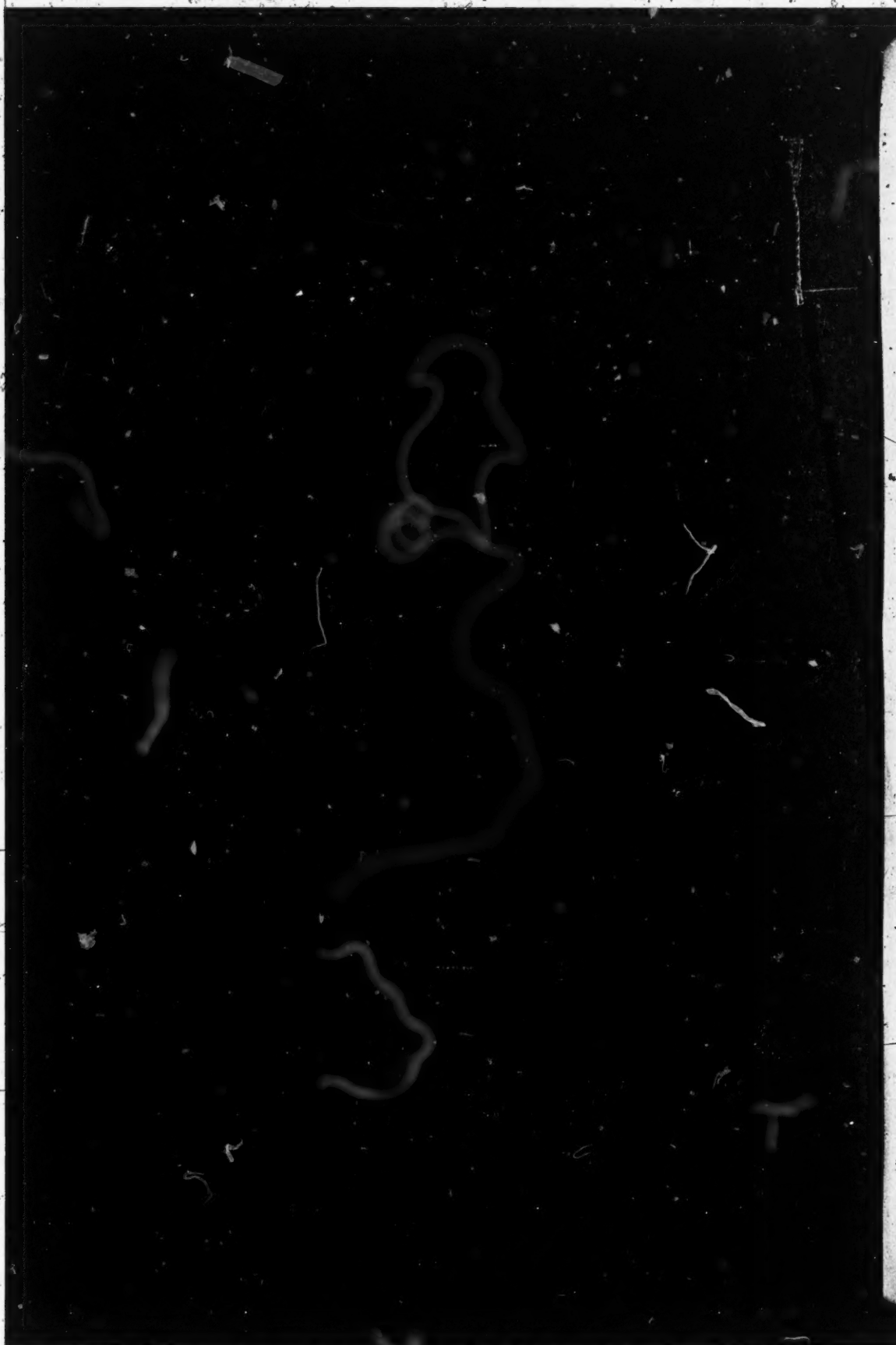

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 14

W. A. YARBOROUGH, PETITIONER,

vs.

SADIE YARBOROUGH, BY HER GUARDIAN AD LITEM, R. D. BLOWERS

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

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IN SUPREME COURT OF SOUTH CAROLINA

YARBOROUGH

vs.

YARBOROUGH

STATEMENT

Sadie Yarborough, a minor of the age of 16 years, commenced this suit through her maternal grandfather, R. D. Blowers, as guardian ad litem, in Spartanburg Common Pleas, on August 20, 1930. The suit is one for support, and the amount sought was a lump sum of $1,000.00, and $125.00 per month. Jurisdiction of the defendant, W. A. Yarborough, who is plaintiff's father, was obtained by attachment, he being a resident of Atlanta, Georgia.

The defendant appeared generally and filed his answer, setting up the following defenses:

1. A general denial.

2. That in 1929 he had obtained a divorce from plaintiff's mother in a Georgia court, and in said cause he had been required to pay $1,750.00 to R. D. Blowers as trustee, for the permanent support of his daughter, which payment he had made, and that such payment operated as a full and final discharge of his obligation to support his daughter, said judgment being res adjudicata of the matter of support, and binding on the South Carolina court.

3. That if the right of support was not finally adjudicated in the Georgia divorce suit, that court was the proper and only tribunal to afford plaintiff relief.

4. That defendant was entitled to an accounting for $1,750.00 in any event before being required to provide further support.

5. That under the decree of the Georgia court in the divorce suit, defendant was given the right to see his daughter at certain intervals, but that she was so bitter, insulting, and disrespectful that he had ceased making at-

[fol. 4] tempts to see her, and that he ought not to be required to support her under such circumstances.

6. That defendant had remarried, and if his daughter would enter his home with the attitude of a dutiful daughter, she would be welcome there, and he would support her to the best of his ability, regardless of any question of his legal liability to do so.

The case was referred to the Master to take and report the testimony, and was heard upon the testimony by Judge T. S. Sease at chambers in Spartanburg on July 21, 1931. On August 22, 1931, Judge Sease filed a decree, in which he held that the judgment in the Georgia divorce suit did not provide for the permanent support of the plaintiff herein, and he ordered the defendant to pay plaintiff $50.00 per month for support, and to pay a fee of $300.00 to her attorneys.

The case is up on the defendant's appeal from that decree, but no question is here made as to the amount of the allowance provided for in the decree or the sufficiency of the accounting in the court below, the questions raised by the defendant's exceptions all being based upon the proposition that under the law and facts of the case the defendant should not be held liable for the support of the plaintiff, and two minor propositions.

Omitting caption and verification, the complaint is as follows:

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

COMPLAINT

Plaintiff alleges:

1. That R. D. Blowers, her paternal grandfather, is her [fol. 5] duly appointed and qualified Guardian ad litem.

2. That she is a minor sixteen years of age, and the only child of the defendant; that she has no property nor any income of any kind, and is dependent upon her father for maintenance, support and an education.

3. That she is now ready for college and is without funds, and, unless the defendant makes provision for her, she

will be denied the necessities of life and an education, and will be dependent upon the charity of others.

4. That the defendant is a non-resident, residing, as plaintiff is informed and believes, in Atlanta, the State of Georgia.

5. That the defendant divorced plaintiff's mother more than two years ago, who was then his wife, and, at his request, the plaintiff has resided with her mother, Mrs. Susie Yarborough, and her paternal grandfather, R. D. Blowers, at Spartanburg, South Carolina.

6. That, as plaintiff is informed and believes, the defendant has a large annual income both from his business and his investments, aggregating around Fifteen Thousand Dollars; that an allowance of the sum of One Thousand ($1,000) Dollars and monthly payments thereafter of One Hundred and Twenty-five ($125) Dollars would be necessary to maintain plaintiff and educate her as required by her station in life, and the defendant's income warrants the allowance of said sums.

Wherefore plaintiff prays for judgment against the defendant for the sum of one thousand dollars and for the [fol. 6] monthly payment of the sum of one hundred and twenty-five dollars per month; for a reasonable attorney's fee, and for such other and further relief as to the court may seem just and proper.

Lyles & Daniel, Attorneys for Plaintiff.

Omitting caption and verification, the answer is as follows:

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

ANSWER

The defendant, William A. Yarborough, answering the plaintiff's complaint, respectfully alleges:

1. The defendant, who is and has been for many years a resident of Atlanta, Georgia, and a non-resident of South Carolina, admits that the plaintiff, Sadie Yarborough, is

his minor daughter, of the age of about sixteen years, and that, as he is informed and believes, she resides with her maternal grandfather, R. D. Blowers, in Spartanburg, South Carolina. He denies the other allegations of the complaint except as hereinafter admitted.

2. Further answering, defendant alleges that on or about the 21st day of September, 1927, he instituted an action in the Superior Court of Fulton County, Georgia, (the same being a court of record and of general jurisdiction) against his then wife, the mother of the plaintiff herein, said action being entitled, "W. A. Yarborough, Plaintiff, against Susie B. Yarborough, Defendant." That the relief sought by plaintiff in said action was an absolute divorce from his said wife, who appeared in said action personally and by attorney, filed an answer and contested said action, [fol. 7] but such proceedings were had therein as resulted in a judgment of absolute divorce. That in said action his then wife made a claim of permanent alimony both for herself and their minor daughter, Sadie Yarborough, and on the 17th day of January, 1929, an order of the court was duly filed in said cause, which order in effect provided that the plaintiff therein (the defendant herein) should pay Susie B. Yarborough the sum of $1,750.00 as permanent alimony, and should pay R. D. Blowers, as Trustee for his grandchild, Sadie Yarborough, the sum of $1,750.00 as permanent alimony for her. That defendant has made the said payments, which were intended to operate and did operate under the judgment of the Georgia court as a full and final discharge of all obligations on his part to support and maintain his former wife and to support and maintain their daughter, the plaintiff herein. That defendant sets up said judgment of divorce and for the payment of alimony as a bar to this action, the matter of his liability for the support and maintenance of his said daughter during her minority having been finally and completely adjudicated by the judgment of the Superior Court of Fulton County, Georgia, in the said action, which judgment is binding on this court under Article IV, Section 1, of the Constitution of the United States of America.

3. Further answering, defendant alleges that in the above entitled action the Superior Court of Fulton County, Georgia, obtained full and exclusive jurisdiction over the parties, including defendant's minor daughter, as well as the

matter of his obligation to support her, and if she has any present claim against him for support, said claim can only [fol. 8] be asserted in that action in that court, and this court is entirely without jurisdiction to entertain this action or to award plaintiff the relief she seeks.

4. Further answering, defendant alleges that he is now, and at the time of the entering of the above mentioned judgment for alimony was, a man of very moderate means, and the sum of $1,750.00, which he paid to R. D. Blowers as Trustee, as aforesaid, was and is a reasonable provision for the maintenance and support of the plaintiff, and the said Blowers should in any event be required to account for same in this action and replace any part of said sum which he may have wasted, and thereafter properly exhaust said fund, before defendant is required to provide further funds for the plaintiff.

5. Further answering, defendant alleges that by the above-mentioned judgment of the Georgia court he was given the right to see his daughter, the plaintiff herein, at intervals, and he made several attempts to see her, and on the occasion of his last visit she was so bitter, insulting and disrespectful in her attitude and language, and thereafter wrote him such a painful and uncalled for letter that, in spite of his affection for her, he has not since felt equal to the ordeal of attempting another visit. And defendant alleges that even if he otherwise were liable for the support of his daughter, he should not be compelled to support her under these circumstances, when she has sufficiently attained the age of discretion to realize and to perform the obligation that she owes to defendant as her father.

6. Further answering, defendant alleges that he has [fol. 9] recently remarried, and he and his wife reside in Atlanta, Georgia. That defendant has a deep affection for his daughter, who is his only child, and nothing could make him happier than to have a complete reconciliation with her. That if she will enter his home with the attitude of a dutiful daughter, he and his wife will welcome her, and so long as she maintains that attitude he will support and maintain her to the best of his ability and endeavor to make her happy, regardless of any legal obligation in the premises.

Wherefore defendant prays that the complaint be dismissed, and/or for such other relief as may be proper.

Nettles & Oxner, Attorneys for Defendant.

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

ORDER OF REFERENCE

The case was referred to the Master of Spartanburg County to take and report the testimony.

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

Statement of Evidence

R. D. BLOWERS, being duly sworn, says:

Direct examination.

By Mr. Lyles:

Q. Mr. Blowers, you live in Spartanburg?
A. Yes, sir.
Q. You have lived here how long?
A. Fifty-one years.

Q. I believe the plaintiff in this case, Sadie Yarborough, is your granddaughter?
A. Yes, sir.
Q. You are the Guardian ad Litem for her?
A. Yes, sir.
[fol. 10] Q. Do you know how old Sadie is?
A. Sixteen last July.
Q. Your daughter Susie married Mr. W. A. Yarborough, the defendant?
A. Yes, sir.
Q. You know about how long they lived together?
A. I can't tell the years.
Q. Do you know when they were married?
A. I don't recall.
Q. State whether or not Sadie has lived with you for part of the time?
A. Yes, sir.

Q. When did she commence to live in your home? About how long ago?

A. I really couldn't tell that; several years.

Q. Is she living in your home now?

A. Yes, sir.

Q. And her mother too?

A. Yes, sir.

Q. I believe Mr. Yarborough and Mrs. Yarborough were divorced?

A. Yes, sir.

Q. You know about when that was?

A. I don't believe I can tell you the dates.

Q. Since the divorce, state whether or not Sadie has lived in your home?

A. Yes, sir.

Q. Do you know where she went to school last year?

A. At Belmont, N. C.

Q. Is she attending school now?

A. Yes, sir.

Q. Where?

[fol. 11] A. Spartanburg.

Q. High School?

A. Yes, sir.

Q. Do you know what grade she is in?

A. Eight, I believe; ninth.

Q. You received, as Trustee for her, some money a few years ago?

A. Yes, sir.

Q. What was the amount?

A. $1,750.00.

Q. What became of that money?

A. It was spent on her, and more.

Q. When was that that you received that as Trustee for her?

A. I can't give you dates, Mr. Lyles.

Q. Do you know whether it was at the time the divorce was granted or not?

A. No, sir.

Q. Before or after?

A. After.

Q. Has Sadie lived with you from the time that money was received on up to the present time?

A. Yes, sir.

Q. Was she living there prior to that time?

A. Yes, sir.

Q. How long prior to that time had she lived there?

A. Possibly two years.

Q. Had Mr. Yarborough contributed to her support up until this money was received?

A. No, sir.

Q. Did he continue to pay $80.00 a month board on up until this divorce was granted?

[fol. 12] A. They were not living with me at that time.

Q. Immediately preceding the removal to Atlanta, where did they live?

A. At my house.

Q. Did he pay the board of $80.00 a month for the two up until they moved to Atlanta?

A. Yes.

Q. Do you know Mr. Yarborough's business?

A. He is a traveling salesman.

Q. Do you know how long he has been in that business?

A. Some twenty or thirty years, I imagine.

Q. Coming back to this $1,750.00, you said it was spent on Sadie, and more. How was it spent?

A. For her clothing and——

Q. Who had the spending of this money?

A. I gave it to Mrs. Yarborough.

Q. The mother?

A. Yes.

Cross-examination.

By Mr. Nettles:

Q. I understand you to say, Mr. Blowers, that you consider that Sadie's living expenses have been costing you $125.00 per month?

A. No, I didn't say that. I said it would cost that.

Q. You brought this suit last August, did you not?

A. Yes, sir.

Q. At the time you brought the suit, had the funds that Mr. Yarborough had provided for Sadie, that $1,750.00, been exhausted?

[fol. 13] A. I didn't keep a record of that. Mrs. Yarborough has that.

Q. You held that fund as Trustee?

A. As soon as I received it, I turned it over to Mrs. Yarborough.

Q. To spend as she pleased?

A. Yes, sir.

Q. Do you know of your own knowledge whether that fund has been exhausted or not?

A. Yes, sir.

Q. How did you know that?

A. I have looked over a record that she has.

Q. Was that fund exhausted when this suit was brought?

A. I don't recall the dates, but more than that amount had been spent on her.

Q. By whom?

A. By Mrs. Yarborough.

Q. Has Mrs. Yarborough any income?

A. No, sir.

Q. Whose money was spent on Sadie besides this fund?

A. It was all this fund, I suppose.

Q. You haven't put out any money for Sadie yourself?

A. Yes, sir.

Q. How much?

A. I have spent hundreds and hundreds of dollars. I have paid the board that he didn't pay in Hendersonville; by checks, where Mr. Yarborough failed to pay it.

Q. When was that?

A. June 8, 1927, I paid M. Rich & Bros. a check for [fol. 14] $132.40. Said they didn't want to leave Atlanta owing money and Mr. Yarborough wouldn't pay it, and I paid it for them.

Q. Back in 1927, do you know how much money Mr. Yarborough was giving to his wife?

A. No, I don't, but I knew it wasn't sufficient, because they called on me for money, and I went there several times and gave them money to live on.

Q. For all you know, Mr. Yarborough may have been putting up $150.00 or $200.00 a month for them?

A. I don't know, but they appealed to me for money to pay their bills with.

Q. And you do know that your daughter is a very extravagant woman?

A. No, sir, I don't know it.

Q. You have never heard her charged with that?

A. No, sir.

Q. What I am interested in is not any money that you may have spent on your daughter or granddaughter before the divorce, but I am asking you this: What money, out of your pocket, have you spent on Sadie in the year 1930?

A. I don't keep a record of that; when I give her money, or buy her shoes, I have them charged to my account; Wright-Scruggs Shoe Store. I can get those bills if you wish.

Q. Can you give us some general idea?

A. No, sir, I do not keep a record of it. I sent her money to school every week when she was at school; spending money.

Q. You are bound to have some idea whether you spent fifty dollars or a thousand out of your own pocket in the year 1930 on Sadie?

[fol. 15] A. As I say, I don't keep an account of things like that when I am giving her money necessary for her to have.

Q. I am asking you to give the Court some fair idea of the approximate amount you spent on your granddaughter in the year 1930?

A. Well, about $500.00.

Q. How do you arrive at that figure?

A. I am getting about what it cost for a ward, and guessing at the amount I have given her during that period.

Q. How much are you putting board in at?

A. $50.00 a month.

Q. During the year 1930, how much of this Trustee fund was spent on Sadie?

A. That was all spent by my daughter. No money at all was spent by me. I gave her the entire amount, every dollar of it.

Q. And you have no idea?

A. No, sir.

Q. Didn't you realize that you were legally responsible for the handling of that fund?

A. No, sir, I had never been made Trustee or Guardian for her.

Q. You received it as Trustee, did you not?

A. Well, Mr. Yarborough asked me if I wouldn't wait on him for this money.

Q. You received that money as Trustee, under the decree of divorce in the Georgia Court?

A. I had signed no papers or hadn't been asked to take it for her. I hadn't been appointed.

Q. Did you ever see the order or a copy of the order [fol. 16] of the Superior Court of Fulton County, Georgia, under which you received this fund?

A. No, sir, never read any order of the Court.

Q. Don't you know that you received this fund as Trustee for Sadie, for her support, maintenance and education?

A. The only reason it was handled through me was at the request of Mr. Bomar, Mr. Yarborough's attorney.

Q. I am asking you if you didn't receive that money as Trustee for Sadie, for her maintenance, education and support?

A. I haven't received it, only to turn it over to Mrs. Yarborough. That is the way I handled it, and she will account for it.

Q. Do you deny that you knew that you received it as Trustee for Sadie?

A. I deny being appointed; I received the money.

Q. You understand that if I give you a check payable to you as Trustee for somebody else and you receive it, that you receive it as Trustee, don't you?

A. I don't remember whether these checks came as payable to Trustee or not.

Q. What did you do with that money when you got it?

A. I gave it to Mrs. Yarborough. Gave her the check for it.

Q. How did you understand that that money came to you?

A. All I understand was in the settlement of the divorce proceedings.

Q. And you know perfectly well that you received that money as Trustee for Sadie?

[fol. 17] A. No, sir.

Q. You know perfectly well that last summer you brought a suit in the Court of Common Pleas of this County as Trustee for Sadie, about this very fund?

A. I don't know.

Q. Didn't you get Mr. Howard Carlisle to bring a suit for you last summer, as Trustee for Sadie, suing Mr. Yarborough on this $1,750.00 note he gave?

A. I don't know whether it was brought as Trustee or not. I had Mr. Carlisle to take up the Building & Loan for Sadie. If I made it as Trustee, I will say "yes".

Q. Didn't you receive Mr. Yarborough's note for $1,750.00, and wasn't that secured by a $2,000.00 real estate mortgage given by N. O. McDowell, Inc., to W. A. Yarborough?

A. I think that is correct.

Q. And wasn't that note made to you as Trustee for Sadie Yarborough?

A. Yes.

Q. And didn't you get that note pursuant to the decree of the Georgia Court in a divorce suit?

A. Yes, sir.

Q. And the McDowell paper was foreclosed, wasn't it?

A. Yes, sir.

Q. And how much money did you get on the McDowell paper?

A. I think it was $1,283.00 and some odd cents.

Q. And you turned around and sued Mr. Yarborough, as Trustee for Sadie, for the balance?

A. Yes, sir.

[fol. 18] Q. And in that suit, you attached the Building & Loan stock?

A. Really I can't answer those questions. I don't know what Mr. Carlisle attached.

Q. Didn't you sign an attachment bond?

A. Yes.

Q. What did you tell Mr. Carlisle to attach?

A. I don't know what he attached. I signed a bond paper. I know.

Q. Don't you know they attached his Building & Loan and his bank account?

A. I rather think so.

Q. Don't you know it?

A. I will say "yes".

Q. Why have you been so reticent about admitting it?

A. I didn't understand it, sir, that is all.

Q. And you say you don't know how much of that $1,750.00 was spent on Sadie in the year 1930?

A. No, her mother can answer that.

Q. And you think you spent $500.00 out of your pocket on Sadie?

A. Yes, sir.

Q. You collected some interest on that $1,750.00, didn't you?

A. Yes, sir.

Q. How much?

A. I couldn't tell you.

Q. What did you do with that?

A. That was given to Mrs. Yarborough also.

Q. You say that a reasonable allowance for Sadie, living expenses and other necessary expenses, is $125.00 a month?

[fol. 19] A. Yes, sir; I should think so.

Q. What are the principal items that make that up?

A. Well, board and upkeep for a young lady of her age; the Court will readily see that it will take that much money to support a young lady of sixteen years. Her board, clothing and incidentals.

Q. What would the board be?

A. $50.00 a month.

Q. What would the clothing be?

A. I couldn't answer that, sir.

Q. Well, you say the whole thing would be $125.00?

A. I should think so.

Q. And I am asking you what goes to make up that $125.00 a month.

A. Clothing and incidentals.

Q. How much for clothing?

A. I should think at least $50.00 a month.

Q. And what else?

A. Incidentals.

Q. How much for incidentals?

A. I should think $25.00.

Q. How about education? Would that be in addition?

A. I just included that in the incidentals. She has to have books.

Q. $25.00 a month would cover the matter of books, education, and spending money?

A. I should think so, not counting a lot of dental work that she has had done, and other things that come along during life. I just made it as a whole, that $125.00 would do it.

[fol. 20] Q. How many sixteen-year old girls in Spartanburg do you know whose upkeep, maintenance and education costs their parents $125.00 a month?

A. I don't know, but I know that I would hate to deprive her of anything that I thought I could give her. I would like to see her taken care of. I am the one who can do it, if her father can't do it, I will tell the Court that, as long as the good Lord will allow me.

Q. If he is unable to do it, you are willing to spend that much on her?

A. Yes, sir, I will.

Q. But you never have spent that much on her?

A. I guess I have spent more than that.

Q. This suit was brought in August last. How much have you spent on Sadie since then?

A. Well, her expenses. I have taken care of her, boarded her, paid incidentals, which I have kept no record of. I didn't think I was going to be called on to account for what I have spent on her. If I had, I would have kept a record of it.

Q. I am trying to find out what you think is a reasonable amount to spend on Sadie.

A. I said I thought $125.00 was a reasonable amount.

Q. And I am trying to test the accuracy of your opinion on that. Have you ever spent $125.00 on her in any month since the divorce?

A. Yes.

Q. When?

A. In the last month or two. I give her money every week as far as that is concerned.

Q. How much?

A. When she says she wants so and so, I give it to her. [fol. 21] If she wants to go to a show, I don't limit her. I paid as much as $3.30 for a seat in the theatre. I don't give them gallery seats or anything like that. I give them the best I can afford.

Q. Do you think it is the duty of her father to buy her theatre tickets at $3.30?

A. It is as little as I have ever done. I have got Montgomery Theatre check stubs to show you where I paid $3.00 a seat and thirty cents tax. I never buy less than a $3.00 seat at the theatre.

Q. Do you think it is the duty of her father to furnish her theatre tickets at that price?

A. Oh, yes; he is well and able to do it. When a man is loaning money by the thousands to people in Spartanburg,

which draws eight per cent interest, I think he is able to take good care of his own blood child.

Q. Have you any idea what Mr. Yarborough's financial condition is today?

A. No, but I know he carried Building & Loan stock and bought stocks and had interests in various enterprises and has them now.

Q. What property has he got in Spartanburg County that you know of?

A. I don't know whether he has sold out his interest in various things or not.

Q. You are not ignorant about that matter. I want you to answer my question. You attached it, you ought to know what he has got?

(Silence from the witness.)

Q. Well, he had five shares of stock in the Carolina National Bank, didn't he?

A. Yes, sir.

[fol. 22] Q. What became of that?

A. I don't know what he did with it.

Q. Don't you know the bank busted?

A. Yes, sir.

Q. And don't you know instead of getting anything for it, he had to pay $500.00 to the Bank?

A. No, I don't know what he paid. There are lots of them that haven't paid anything to the Bank.

Q. He had some Building & Loan stock, didn't he?

A. Yes, sir.

Q. And he pledged that Building & Loan stock to the Carolina National Bank in order to raise $1,500.00 toward paying Mrs. Yarborough the $1,750.00 that the divorce decree called for, didn't he?

A. He didn't have to do that, when he was loaning money out. I don't know how he secured the money. I know that Mr. Carlisle handled the case and he secured the money; I don't know how he got it.

Q. How much money did he have out at interest?

A. I don't know. The records will show here.

Q. Don't you know as a matter of fact that he had two $2,000.00 mortgages?

A. He had more than that. I looked up the records. He claimed to be in such a financial strait, and I found that he

was loaning money, and I didn't call that in a financial strait.

Q. What Spartanburg mortgages has he had in the last two years outside of the two $2,000.00 McDowell papers?

A. When I looked up the records, I found he loaned Dr. Gibson a thousand or two.

Q. How long ago was that?

[fol. 23] A. I suppose that was two years ago.

Q. Longer than that?

A. Possibly so.

Q. Wasn't one of the McDowell papers the paper that he put up as collateral to the note he gave you for Sadie?

A. It was a McDowell paper, I know that.

Q. I want you to tell the Court what property, of your own knowledge, Mr. Yarborough owns in Spartanburg County today?

A. I have never investigated; I don't know.

Q. But since the divorce you have collected nothing for your granddaughter's board?

A. No, sir.

Q. Why didn't you?

A. Wasn't anything coming out of the money to collect it from. It was paid on her other expenses.

Q. This $1,750.00 was ordered paid to you by the decree of the Fulton County court in January, 1929, was it not?

A. I guess that is right.

Q. And you say that since that time, the $1,750.00, as far as you know, has all been spent on your daughter?

A. Yes, sir.

Q. Well, it wasn't all spent in 1929, was it?

A. Why, I don't know when it was spent. I didn't keep a record of the dates.

Q. You will agree that $1,750.00 was too much to spend on the child in one year, wasn't it?

A. No, I won't agree to that; no.

Q. Do you want to put Sadie in a boarding school?

[fol. 24] A. I haven't made no decision as to what I want to do with her.

Q. Is she old enough to go to college?

A. No.

Q. In your sworn complaint you say she is now ready to go to college. Do you want to correct that?

A. She will be ready next season.

Q. She is in the ninth grade now. She will have to finish the eleventh grade before she is ready for college?

A. I don't know how many grades they have got here.

Q. How long have you been living here?

A. Fifty-one years.

Q. And you don't know how many grades there are in the public schools?

A. No.

Q. If Mr. Yarborough is not required to support her further, what do you expect to do about her education?

A. That is to be determined on later.

Q. Do you intend to send her to college?

A. I expect so.

Q. Are you going to send her to boarding school or let her go to public school in the meantime?

A. That hasn't been decided on.

Q. Mr. Blowers, have you any objection, as Sadie's grandfather, to her living with her father?

A. Yes.

Q. What is your objection.

A. I wouldn't care to repeat it in Court. I can go into details, if you wish to.

Q. What is the circumstance of your objection to Sadie's [fol. 25] living with her father? Now tell what you know?

A. I would object seriously, sir, without the Court knowing.

Q. State your objection?

A. I don't think it is a proper place for her to live.

Q. Why?

A. Unless you want to go into details, I refuse to answer.

Q. I am asking you why, and I demand that you answer?

A. Well, the simple reason is she gets better attention in my house. Take better care of her than I think she would get by going outside and living with a step-mother.

Q. So you object to her living with her step-mother?

A. Yes, sir.

Q. Your are making no objection to Mr. Yarborough?

A. No.

Q. He was always kind to Sadie, wasn't he?

A. I couldn't say that he was when he left her penniless.

Q. When they lived together, he was kind to her, wasn't he?

A. They never lived together. He made his headquarters in Atlanta, and he wanted them in Spartanburg, out of his way. He has expressed that.

Q. But you assign no specific objection to Mr. Yarborough against Sadie's living with him? You just don't [fol. 26] like the idea of the child living with her stepmother?

A. I leave that up to her. She is here to speak for herself.

Q. Have you ever talked to Sadie about it?

A. No, I have never approached her on the subject.

Q. Have you ever discussed the subject with Sadie's mother in Sadie's presence?

A. No. That is their own family affair.

Q. Under the decree of the Georgia Court granting Mr. Yarborough a divorce, it was stipulated that Mr. Yarborough was to see Sadie and be able to have her with him alone every second and fourth week ends in the month?

A. I couldn't say.

Q. Don't you know that?

A. No, sir, I do not.

Q. Well, you do know that he made numerous efforts to see her and didn't get to see her?

A. No, sir.

Q. You don't know that?

A. No, sir.

Q. Do you know why he hasn't been seeing her since the divorce?

A. No, sir.

Q. And you have never said anything to Sadie against her father?

A. No, sir; positively, no.

Q. You have considerable feeling against him yourself?

A. Not at all; none in the world.

[fol. 27] Q. You like him?

A. Yes, sir.

Q. He is a good man, isn't he?

A. Yes, sir. That is, to a certain extent.

Q. To what extent?

A. That is, to the way he has acted about his family affairs.

Q. Doesn't your feeling against Mr. Yarborough grow out of the divorce proceedings?

A. Yes, sir, it does.

Q. As a matter of fact, you and Mr. Yarborough got along mighty well until that time?

A. Yes, sir.

Q. Isn't it a fact that feeling against Mr. Yarborough grew out of the divorce suit?

A. Yes, sir. People that I came in contact with while I was in Atlanta told me so much about Mr. Yarborough and about his habits in the way of running around with the women.

A. Mr. Yarborough filed a suit for divorce against your daughter?

A. Yes, sir.

Q. And she filed a cross suit, didn't she?

A. I believe so.

Q. And he was granted the divorce?

A. Yes, sir.

Q. And all those matters were threshed out in that divorce suit?

A. It was a compromise in a way.

Q. Your daughter had the opportunity in that suit of bringing out everything she wanted to against Mr. Yarborough?

[fol. 28] A. Not that I know of; it was compromised.

Mr. Lyles objects to going into the divorce case.

Objection sustained.

Q. You said something just now about helping Mr. Yarborough out in the support of his family. Didn't Mr. Yarborough support his family as long as he lived with them?

A. As far as I know, he did.

Q. Do you know how much he gave his wife for the support of herself and her child?

A. I have never asked him or her. I don't know.

Q. As far as you know, he took care of them?

A. Yes, sir.

Q. Mr. Blowers, just to get the matter clear in the record: Are you prepared to make an accounting as Trustee for the $1750.00 and interest that was turned over to you for Sadie?

A. Yes, through the records that my daughter has.

Q. I understood you to say just now that you didn't know anything about Mr. Yarborough not being able to see Sadie. Is that correct?

A. Yes, sir.

Q. Do you recall the occasion when you went to the Gresham Hotel here late one night and woke up Mrs. Yarborough's mother, and told her that you had learned that Mr. Yarborough had not been able to see Sadie because your daughter objected to it, and that you would see that that didn't happen again. Do you recall the occasion to which I refer?

A. I didn't wake his mother up.

[fol. 29] Q. Just tell what happened?

A. He stopped me on the street one afternoon and asked me if I would come down to the Hotel, and I went down there, and he wanted me to interfere with the divorce proposition, and I told him, no, that I wouldn't have a thing to do with it. He said, "I always intend to take care of Sadie and support her and always will", he said:

Q. What did he say to you by way of complaint about your daughter not letting him see Sadie?

A. He said the Court order gave him permission to see Sadie and he hadn't seen her.

Q. And what did you say to him about that?

A. Well, I says, "She is in Hendersonville", and he could see her any time he wanted to.

Q. Didn't you tell him that you would do what you could to arrange for him to see her?

A. Yes, I told him that.

Q. Did you do it?

A. Yes, I talked to Susie and Sadie, and told them whenever he wanted to see her, to let him see her.

Q. Did he get to see her after that?

A. I don't know. I was living here then and they were in Hendersonville.

Redirect.

By Mr. Lyles:

Q. Mr. Blowers, is your estimate of the fact that $125.00 a month for the support and maintenance and education of Sadie based upon your information of what Mr. Yar-

borough earns and is worth?

A. Yes.

[fol. 30] Q. Mr. Nettles asked you if you did not, through Mr. Carlisle, attach some Building & Loan or funds last summer. I believe your reply was that you did employ him. Do you recall what you got out of that proceeding for Sadie?

A. Nothing.

Q. You answered Mr. Nettles' question awhile ago that there were some funds attached last summer through Mr. Carlisle, as your attorney. What, if anything, did you receive for Sadie out of that suit?

A. I haven't received anything.

Q. How did you get the $1,750.00? How was it paid?

A. Well, there was a foreclosure of a mortgage here at the Court House. The property was sold.

Q. And you stated that you got twelve hundred and eighty-three dollars and something. How did you get the balance to make up the $1,750.00?

A. He refused to pay it.

Q. How did you get it?

A. He refused to pay it, and I was compelled to employ counsel to get it.

Q. And whom did you employ?

A. Mr. Carlisle.

Q. And was that the suit in which these funds were attached?

A. Yes, sir.

Q. You, I believe, are a little deaf?

A. Yes, sir.

Q. Did you get sufficient money out of that attachment proceeding to make up the $1,750.00?

[fol. 31] A. Yes, sir but was compelled to employ counsel to get it.

Q. Did you have to pay counsel an attorney's fee?

A. I don't think I had to pay counsel fee.

Q. But you did have to attach in order to get the balance of the $1,750.00?

A. Yes, sir.

Q. Did the lawyer work for nothing? How was he paid, do you know? Did you pay it or did Mr. Yarborough?

A. Really I don't know. Mr. Carlisle sent the amount of the check that made up the difference.

Cross-examination.

By Mr. Nettles:

Q. With reference to your attitude toward Mr. Yarborough's seeing his daughter, I will ask you if you recall on one occasion when Mrs. Yarborough was cited by the Atlanta Court for contempt in failing to let Mr. Yarborough see Sadie, and you were present, were you not, when the matter came up before the Judge?

A. Yes, sir.

Q. And isn't it true that you told the Judge that if he wouldn't punish your daughter for contempt, that you would see that Mr. Yarborough did get to see Sadie?

A. No, sir, I never spoke to the Judge.

Q. Didn't your attorney tell the Judge that?

A. I don't know what he done.

Q. Weren't you there in Court?

A. I was there in Court.

[fol. 32] Q. Didn't your lawyer tell the Judge that in your presence?

A. Not that I know of. I didn't hear any conversation. I didn't sit close enough to hear the conversation.

Q. Why didn't the Judge punish your daughter for contempt?

A. I didn't know that he had occasion to.

Q. Mr. Yarborough was there claiming that he had not been permitted to see Sadie as the order of the Court provided?

A. She went I think a time or two in an automobile to North Carolina.

Q. Wasn't your daughter cited for contempt and appeared before the Judge to explain why——

A. Paragraph marked in this letter is "why".

Q. I will ask you if your daughter was not cited for contempt in failing to let Mr. Yarborough see Sadie as the Court order specified?

A. I don't know whether she was cited or not, but that is a letter that was written to her by her counsel. It would be optional whether she would let him see Sadie or not.

Mr. Nettles objects to the witness' quoting from the letter.

Q. Don't you know your daughter was cited for contempt?

A. I wasn't close enough to hear the conversation.

Q. Weren't you in Court?

A. Yes, sir.

[fol. 33] Q. What did you take them over there for?

A. To attend the trial.

Q. Don't you know your daughter was cited for contempt and you went over there to answer that citation?

A. No, went over there for another trial.

Q. And don't you know that your daughter's attorneys told the Judge that if they would not punish your daughter for contempt, that you, her father, would see that Mr. Yarborough was given a chance to see his daughter?

A. I didn't tell the attorney that. I didn't speak to the Judge.

Q. Don't you know that she had been cited for contempt in this matter?

A. No.

Q. Don't you know that you went over there in answer to the citation?

A. No, sir.

Q. You never knew that the Court ordered her to show cause why she shouldn't be cited for contempt in failing to let Mr. Yarborough see Sadie?

A. No, sir.

Q. When your daughter got that citation, didn't you go to Mr. Yarborough's mother and ask her to ride over to Atlanta and try to do something about it?

A. No, sir, positively no. I haven't spoken to Mr. Yarborough's mother since this proceeding has been going on.

Q. You do know that Mr. Yarborough didn't get to see Sadie according to the Court order?

A. Only from what I read there. (Witness refers to let-
[fol. 34] ter.) I can't say. I don't know, other than I heard——

Q. Don't you know that Mr. Yarborough complained to the Court that he wasn't getting to see Sadie and had Mrs. Yarborough up in Court about it?

A. No, she wasn't up in Court about it. She was attending Court in this same case, but she was not summoned there to appear for this.

Q. What did she do there?

A. He made the statement that he couldn't get to see her.

Q. And what did the Court say about it?

A. The part that I heard said that he should be allowed to see her.

Q. Didn't you there in the Court House tell your daughter's attorneys that you would see that Mr. Yarborough did get to see Sadie thereafter?

A. I don't remember anything of the kind.

Q. Do you deny that?

A. Yes, sir, straight out.

SADIE YARBOROUGH, being duly sworn, says:

Direct examination.

By Mr. Lyles:

Q. Miss Sadie, how old are you?

A. Sixteen last July 19th.

Q. Where have you been living since your mother and father were divorced?

A. Last year I was over at school at Belmont, N. C. Before that we were living with my grandfather. We are living with him now.

Q. Prior to the removal to Atlanta, where did you and [fol. 35] your mother live for the last year prior to that?

A. We had changed about a good deal. We had been living in Hendersonville. Most of the time we lived here with grandfather.

Q. Do you recall about the time you and your mother went to Atlanta?

A. Yes, sir.

Q. When was that?

A. I think it was in 1926 or '27. I went to school there one year.

Q. What school?

A. Moreland Avenue, public school.

Q. Where did you live while you were in Atlanta?

A. We lived on Ponce de Leon Avenue.

Q. Was it an apartment house or cottage or what?

A. It was an apartment house.

Q. How many rooms in that apartment?

A. I suppose you would call it four rooms. There was a kitchenette and breakfast room combined.

Q. Do you know what was paid for that apartment?

A. $82.50, I think, was paid for that apartment. Our garage was several houses up, and we had to pay extra for that.

Q. You kept a car?

A. Yes, sir.

Q. Was your father traveling then?

A. Yes, he was traveling.

Q. What was he selling then?

[fol. 36] A. He was traveling for candy.

Q. Do you know whether or not he is engaged in practically the same business now?

A. Yes, I am pretty sure he is still in the same business. I am not positive.

Q. At the time you lived in Atlanta, did he make any allowance for your support?

A. He gave mother a certain amount outside of the house-house expenses. He gave her a certain amount to pay for both our clothes and things.

Q. He would give her the money for you?

A. Yes.

Q. You don't know what that was?

A. No, I don't.

Q. You stated a moment ago that you went to Belmont to school last year. What school is that?

A. Sacred Heart Academy.

Q. That is a Catholic school?

A. Yes, sir. I had been there before, about four or five years before that, to school.

Q. Who had sent you?

A. My father and mother were planning to go to Florida and they sent me there.

Q. How long did you go to that school that year?

A. I went the whole year. I mean the whole school term, nine months.

Q. Did your father send you there?

A. Yes, he paid for all my bills and sent me a monthly check.

Q. Do you know what the cost of that term or school year was?

[fol. 37] A. Counting the tuition and all, I think it cost about $800.00.

Q. Does that include the spending money?

A. That was just the necessities; board, uniforms, tuition.

Q. What year was that, can you recall?

A. I am not positive, but I think it was the year before we went to Atlanta; must have been 1925.

Q. Did your father say anything about that being too expensive for him?

A. No, I never heard him say anything about it.

Q. Who paid your expenses there last year?

A. Last year the money was taken out of the $1750.00.

Q. Would you say the expense of last year was more or less than the expense of your first year there?

A. Well, I imagine it would be about the same, because before I was smaller and I didn't have to pay for gym fee. I would say about the same, because before he did send me money for incidentals.

Q. Did you get the money for your incidentals from your mother and your grandfather.

A. Yes.

Q. After your mother and father were divorced, did you people make a trip to New York?

A. Yes.

Q. When and for what purpose did you go?

A. I can't tell you what year it was. It was about two months after we got the money. Mother went up there to get work.

Q. Did she take you with her?

A. Yes.

[fol. 38] Q. How long were you and your mother there?

A. We were up there a week.

Q. She paid your expenses out of this money?

A. Yes.

Q. Who paid your expenses?

A. My mother paid my expenses. That was all the money we had, so it came out of that.

Q. Do you know whether your mother was able to get a position?

A. We were to stay with a friend until mother got a position.

Q. Did she get a position?

A. No, this friend was taken sick, and we came back here.

Q. Since that time have you lived with your grandfather?

A. Yes.

Q. You are in what grade at high school?

A. Ninth grade, high school.

Q. State whether or not it was your desire to go back to Belmont?

A. Yes, it was.

Q. Why didn't you go?

A. We had no more money. The $1750.00 was spent.

Q. Since the $1750.00 was paid, have you received any money from your father at all?

A. No. He came over to school one day while I was over there last year and before he left, I told him I needed some money, and he left me a dollar.

Q. Have you visited in Atlanta since his re-marriage?

[fol. 39] A. No.

Q. Have you been asked to visit there?

A. No.

Q. Your father has not asked you to visit there?

A. No, he hasn't asked me to visit there.

Q. After your mother was divorced, what was said, if anything, about where you were to live?

A. Before the divorce, that decree every second and fourth week ends, and after the divorce there wasn't anything said about where I should stay.

Q. State whether or not your father requested you and your mother to live in Spartanburg rather than in Atlanta before the divorce?

A. Yes. He said we would interfere with his business if we went to Atlanta, and he didn't want us there.

Q. When was that?

A. He said he didn't want us in Atlanta while we were in Atlanta.

Q. You stayed there about nine months?

A. Yes, sir,

Q. Did your father make any objection to your living with your grandfather here in Spartanburg?

A. No.

Q. Your grandfather ever object to your going to Atlanta to visit your father?

A. No.

Q. Well, why haven't you gone?

A. I told my father I didn't want to go to see him, and he came to the school and insisted that I go with him, and I didn't go with him, and our attorney in Atlanta said it was up to me to decide whether I wanted to go with him or [fol. 40] not, and my father had not asked for me and in Atlanta he left us, and he didn't seem to want me to see him then, and I didn't care to see him.

Q. You are not able to make any money?

A. No.

Q. Have you been able to make any income at all?

A. No. I wanted to finish school and I wanted to be a nurse.

Cross-examination.

By Mr. Nettles:

Q. How old were you when you first went to Belmont?

A. I was about eleven or twelve.

Q. Weren't you ten or eleven?

A. I really couldn't tell you. I don't remember.

Q. Do you remember what year it was?

A. I think it was during 1925 and '6.

Q. And how much do you say that your expenses were over there that first year?

A. I don't remember the expenses the first year, because I don't think I ever saw any bills. My father paid the bills the first year.

Q. You told Mr. Lyles just now that you thought it was $800.00 and in addition your spending money?

A. That was for the last year I was over there.

Q. That was 1929-30?

A. Yes.

Q. And you don't know what it cost the first year?

[fol. 41] A. No. But the tuition and board has always been the same over there.

Q. What was the tuition the last year you were over there?

A. I think it was three hundred and some odd dollars.

Q. Do you really know, Sadie?

A. I have some of the bills, and I have looked them over, but I don't remember exactly.

Q. The first year you were over there, your father was pretty generous to you, wasn't he?

A. Yes.

Q. Sent you a good deal of spending money, and you had a real affection for him then; didn't you? You loved your father then, didn't you?

A. I had affection for my father, but my father never stayed at home with me, never took me anywhere.

Q. Your father and mother didn't get along?

A. I never heard of any disagreement. He loved us both.

Q. He had an affection for you then?

A. Yes, sir.

Q. And you had an affection for him then?

A. I had an affection; it wasn't what you would call love.

Q. You never loved your father?

A. Yes, it was a love.

Q. You seem rather doubtful about it?

A. My father was never at home much.

Q. You loved him back in those days, didn't you?

A. Yes.

[fol. 42] Q. Wasn't he kind and indulgent?

A. Yes.

Q. Willing to do everything he could for you?

A. Yes.

Q. And you loved him?

A. Yes.

Q. When did you cease to love him?

A. He ran away and left us. He has left me without any money, and he has gone away and married again. He didn't wish to have me with him.

Q. He never went away and left you alone?

A. No, I was always with my mother.

Q. When he went away, did you think it was on your account or on account of some disagreement with your mother?

A. I thought he left us because he preferred this other woman to my mother.

Q. How old were you then, Sadie?

A. I suppose fourteen.

Q. Must have been younger than that?

A. Yes, sir, twelve, I guess.

Q. Who told you there was some other woman in the case?

A. I had heard my father and mother discuss it several times. My mother had some pictures around there I had seen.

Q. Your mother accused him of that before you?
A. Yes.
Q. He denied it?
A. No.
Q. He didn't admit it?
[fol. 43] A. Yes, he admitted he knew this woman and was going around with her.
Q. And that is why you say you ceased to love your father?
A. Yes, he left me without any money and went off with another woman.
Q. How do you know he didn't leave money with your mother?
A. My mother had to fight the divorce in order to get some money for us to live on.
Q. You don't know how much money your father was giving your mother?
A. No, I know he gave us some money to pay our board and our clothes and some extra money to run our car.
Q. What else did you want him to give you money for?
A. That is all he left us money for, but when he left us he didn't give us any money.
Q. How do you know that?
A. Because we had to ask our grandfather to pay our bills for us.
Q. You didn't know how much money your mother spent?
A. No, we never kept an account of it.
Q. You don't know how much bills she ran up that your father paid?
A. No, I don't know. She kept a charge account at Aug. Smith's.
Q. She ran up some bills over in Atlanta?
A. I don't know of any bills except for the furniture.
[fol. 44] Q. As to this second year at Belmont, do you know what your expenses were there? What the tuition and board and everything like that was over there?
A. I don't know the exact sum. I have seen this catalogue. The catalogue says how much it is.
Q. You lived in Atlanta after your first year at Belmont?
A. Yes.
Q. How long did you leave Atlanta before the divorce suit? The divorce suit was begun in September, 1927.

How long before that time did you and your mother leave Atlanta?

A. We lived there that winter and that summer it was so hot we moved away and went to Hendersonville.

Q. And the divorce suit began that fall?

A. Yes, sir, I think so.

Q. Did your mother talk to you about your father being interested in other women?

A. I knew it. It was all discussed there. My father and my mother discussed it, and I was there in their presence.

Q. Now, I show you four letters here, and I ask you if you didn't write those four letters to your father during your first year at Belmont?

A. Yes, I can't state the time they were written. I wrote them all there.

Q. Wasn't it your first year at Belmont?

A. Yes, sir, I am sure they were written the first year I was there.

[fol. 45] Mr. Nettles offers the letters in evidence.

Q. And then you wrote him this letter that I now hand you, during your second year there, didn't you?

A. Yes, sir.

Q. What is the date of that letter, Sadie?

A. Friday, the 3rd, 1929.

Q. The 3rd of what?

A. It is not up here. I can't tell. It was about a week after he came to see me.

Q. And that was the last time he came to see you, wasn't it?

A. Yes, sir.

Q. About his coming to see you: The divorce suit began in the fall of 1927 and the following summer you and your mother were in Hendersonville?

A. Yes, I am pretty sure, because we spent most of our summers up there.

Q. You understood that under the order of the Georgia Court your father was entitled to have you spend every second and fourth week end with him?

A. I understood it was up to my decision.

Q. Your understanding was he could see you those week ends if you wanted to see him?

A. Yes, sir.

Q. Did he come up there to see you any week end that summer?

A. I think so; I really couldn't say.

Q. Did you see him?

A. It was in 1927, did you say?

Q. 1928?

[fol. 46] A. I saw him once when he came up there. Met him in the hotel and went away with him to Lincolnton for the week end.

Q. Did you go to Greenville one week end?

A. I have been to Greenville with him, and I think we came on here and spent the night.

Q. And those were the only two week ends that you were with him that summer?

A. I think I saw him three times; I can't be positive.

Q. He came up there several times to see you and take you away for the week end and you didn't go?

A. I don't remember his coming to Hendersonville but once, and I went with him then. He didn't come up there but once.

Q. That is your recollection about it?

A. Yes.

Q. Am I to understand that you went with him every week end that he wanted you to go with him?

A. No, I didn't want to go with him. I didn't care to go with him.

Q. Did your mother want you to go with him?

A. My mother didn't care. She didn't influence me one way or the other. She said it was up to me and I was old enough to decide for myself.

Q. Don't you know that your mother did not want you to go with him?

A. My mother said it was up to me, whatever I decided.

Q. Your mother was pretty bitter towards your father at that time?

[fol. 47] A. No, I can't say it was bitterness.

Q. She was very much displeased with him?

A. Yes, she didn't think it was quite right to go off and leave us.

Q. She talked to you a great deal about it?

A. No.

Q. Never mentioned it to you?

A. I knew of the divorce. I went with her to Atlanta every time.

Q. And she had no objection to your father seeing you on the second and fourth week ends of each month?

A. No. She said it was up to me to decide.

Q. Didn't she on several occasions take you out of Hendersonville, so that he wouldn't see you?

A. No. It wasn't the second or fourth week end we came home to visit my grandfather, and my father came while we were away, and we didn't know he was coming.

Q. The last year you were at Belmont, he came there to see you twice, didn't he?

A. I remember him coming once.

Q. You don't recall but one trip? Don't you recall the time when he took you to Charlotte for dinner?

A. Oh, yes, I believe he did.

Q. You had forgotten about that time when you answered just now?

A. Yes.

Q. And you told him that your grandfather had promised to send you some spending money but hadn't done it, and you asked him for some money?

[fol. 48] A. Yes.

Q. And didn't he give you $5.00?

A. No, he gave me only a dollar. He said that was all he had with him.

Q. Didn't he give you five one dollar bills?

A. No.

Q. Don't you recall that he asked you how much you wanted and you told him you owed some little things round there that amounted to about $3.00?

A. I remember telling him I owed for a few little things around there, but $1.00 was all he gave me. I was expecting some money from grandfather. He sent me money every month.

Q. How much did he send you?

A. Five dollars.

Q. And it was about a week after that last visit up there when you wrote him this letter that is dated "Friday, 3-29?"

A. Yes, sir.

Q. He wanted you to go to Charlotte with him that week end?

A. I don't remember where he wanted to take me. He wanted me to go with him.

Q. You didn't want to go with him?

A. No.

Q. In fact, you tried to avoid seeing him that week end?

A. I didn't want to see him at all.

Q. And when you found that it was he that wanted to see you, you started to go back upstairs?

A. When I came down I didn't know who it was wanted [fol. 49] to see me, and the Sister told me who it was, and that I had best go in to see him.

Q. And what did you do?

A. I went in.

Q. When you came down and found out who it was, didn't you start back and didn't the Sister call you?

A. I came in through her office.

Q. Anyhow, you didn't want to see him at all, and you saw him because the Sister——

A. Advised me to.

Q. Did you ask your father for any money that time?

A. That was the time he gave me the dollar.

Q. We have things a little confused there. I was asking you just now about the former trip to Belmont and if he didn't give you five dollars on that occasion?

A. Yes, he gave me some money, and I think it was five dollars.

Q. And on this last trip you asked him for some money and you say he gave you a dollar?

A. Yes, sir.

Q. And what did you say he said?

A. He said that was all he had.

Q. Did you thank him for it?

A. Yes, I thanked him for it.

Q. After you wrote your father that last letter, after his last trip to Belmont, you didn't expect him to come to see you any more?

A. No, I didn't want him to.

Q. That is why you wrote the letter?

[fol. 50] A. Yes.

Q. Did you talk to your mother about writing that letter?

A. I wrote to my mother and told her that he had been there and that I had written to him.

Q. And what did she write you back?

A. I was in bed that week. I had a bad cold and his visit had upset me. Mother came up to see me the next week.

Q. And what did she tell you about the letter?

A. She didn't tell me anything about the letter.

Q. She didn't say she thought you had done right or thought you had done wrong?

A. She knew I didn't want to see him.

Q. She didn't want you to see him?

A. My mother didn't care. She said it was up to me to decide.

Q. And what you mean to say is that without any pressure at all or any influence from your mother, you made up your mind you didn't want to see your father again?

A. I did.

Q. But you are asking now that he support you?

A. Yes, until I am able to support myself.

Q. How much do you think it would take to support you?

A. I would think $125.00, because my clothes and my books and my incidentals and my board. I would like to go back to school over at Belmont.

Q. That is a Catholic school?

A. Yes.

Q. Your mother's family Catholic?

[fol. 51] A. No.

Q. Your father's family Catholic?

A. No.

Q. And I believe you said that the reason why your father put you in Belmont in 1925, the first year, was because he and your mother were planning a trip to Florida and there was no one to leave you with?

A. Yes. My father had bought a house in Florida, and they were planning to keep house down there and send for me later.

Q. In the fall of 1929, that was the fall of year before last, you went to public school in Hendersonville, didn't you?

A. Yes.

Q. And your last stay at Belmont began about February, 1930, didn't it, and went to the end of the school year in June?

A. Yes, January or February, I guess it was.

Q. And up to that time you went to school in Hendersonville?

A. Yes, I had just been one year to the school in Hendersonville.

Q. You say you were over in Atlanta in the Court House when all these proceedings were held?

A. Yes, sir.

Q. Do you remember the occasion over there when your father was complaining to the Court that he hadn't been allowed to see you?

A. No, I don't think he brought any complaint up.

Q. You don't know anything about that?

[fol. 52] A. No, I don't think he brought any complaint up.

Q. When you went to Belmont, early in 1930, do you know whether or not your father knew you were going there?

A. Yes, sir, I think he did. I think my mother wrote to him and told him I was going. I am pretty sure he knew I was going there, because he came to see me. I was positive somehow or other that he knew that I was going to Belmont when I started there.

Q. You don't know how he found it out?

A. No.

Q. You didn't write him and tell him?

A. No, I don't think I did.

Q. You didn't speak to your father when he came in the Court Room the other day?

A. No, sir.

Q. And you didn't speak to him when you came in the Court Room about that other Building & Loan stock?

A. No, I don't think I did.

Q. And you passed his old mother on the street and didn't speak to her?

A. I haven't seen Mrs. Yarborough in I don't know when.

Q. You have passed her on the street and have not spoken to her?

A. Yes, I think so. I don't think Mrs. Yarborough has been here for a year or two.

Q. Why didn't you want to speak to her?

A. She hasn't done anything to me, and she crossed the street to keep from speaking to me.

[fol. 53] Q. Do you think that your grandmother was crossing the street to keep from speaking to you?

A. Yes, she has passed my grandmother on the street and not spoken to her.

Q. Who was with you?

A. My grandmother, my mother's mother.

Q. Has she ever done anything to you?

A. No, she has always been nice to me.

Q. Hasn't she taken care of you when your mother was out of town?

A. No, she has asked me to come to see her, and I have spent the night with her several times.

Q. Hasn't she taken care of you when your mother was out of town?

A. I have visited her over the night, but she hasn't taken care of me when my mother was out of town.

Q. You have visited in her home?

A. Yes, sir.

Q. Now just to get the time straight: I believe you testified this morning that the last time you went to Belmont you went in January, 1929?

A. I made a mistake there. I went there the first of the school term. School started in September.

Q. September of what year?

A. 1929.

Q. Where were you in school from January until June, 1929?

A. I was over in Belmont; started in September, 1929, and I went the whole nine months. Before that I was in Hendersonville, I think it was. It was either Henderson-
[fol. 54] ville or Atlanta, and I think it was Hendersonville.

Q. Do you recall your father writing you, sending you candy and money during that time, the nine months before you went to Belmont?

A. I think he did send some candy at Christmas.

Q. At Christmas, he sent you a nice box with all sorts of things in it. Wasn't a ring in it?

A. Yes, sir.

Q. Some clothes?

A. Yes.

Q. And some candy?

A. Yes.

Q. Did you write and thank him for those things?

A. Yes, I am pretty sure I did.

Q. Are you sure you did?

A. Yes, I think I did.

Q. Where is the ring?

A. It is at home.

Q. You don't wear it any more?

A. Yes. I wear it sometimes.

Q. Did he write you pretty frequently along then?

A. No, he never writes very often. He used to write sometimes when he sent that candy and stuff; he would write and say he was sending it.

Q. He wrote you at other times and sent you money?

A. He hasn't sent me any money since the divorce.

Q. When he did write that he was sending you candy or [fol. 55] things like that, did you answer his letters?

A. I wrote and thanked him for it. I don't know whether I answered his letters or not.

Q. Are you willing to go and live with your father now?

A. No, under the circumstances I don't care to go and live with him.

Q. You mean because he has married again?

A. Yes, and he doesn't want to see me. I am sure out of love.

Q. Don't you know he has made numerous efforts since the divorce to see you when he didn't get to see you?

A. I saw him every time he came.

Q. Weren't there times when he would write and try to arrange to see you and didn't get to see you?

A. I told him I didn't care to see him, yes.

Q. You think that is a proper and dutiful attitude for a daughter to take toward her father?

A. I don't think he has been proper and dutiful to me.

Q. I want you to tell the Court what you have got against your father and tell the Court what you know?

A. He has gone off and left me without a penny. He went off and married the other woman. And in Atlanta he said he didn't want us with him.

Q. Did he tell you that?

A. Yes.

Q. What did he tell you?

A. In Atlanta, he said that we interfered with his business.

[fol. 56] Q. Under what circumstances did he say that? How did he happen to say it?

A. My mother and I, I don't remember which, asked him to take us out that evening. He said that he didn't want

to, and he said that he didn't want us down there anyway, that we interfered with his business, and that he didn't have time to take us out.

Q. And you haven't forgiven him for that?

A. No, it is not for that; it is for leaving us.

Q. When did he leave you?

A. He left us in Atlanta.

Q. He travels. He was always leaving home and going off?

A. He left us and said he wasn't coming back. He left us, and came back and said he wasn't going to leave us any more.

Q. Why did he say he was leaving?

A. Said he was going to get a divorce; said he wanted to marry this other woman.

Q. Did he say anything against you, the reason he wasn't coming back?

A. No, he didn't say anything against me, but he left me.

Q. Isn't this true, that what you don't like about your father is the fact that he left your mother?

A. No, he left me too. He left us without any money.

Q. When?

A. In Atlanta.

Q. When? What year?

A. It was the same year the divorce was started; 1927, I think it was.

[fol. 57] Q. Before the action was brought?

A. Yes.

Q. Don't you know he was giving your mother money every month?

A. My grandfather had to pay our board and had to buy our clothes.

Q. Do you know what money your father gave your mother in 1927 before the divorce?

A. He gave her a monthly allowance. He quit paying the money when he left, because our grandfather had to come and get us and pay our bills.

Q. How do you know that your father during all that time wasn't paying your mother an allowance?

A. My mother wouldn't have asked my grandfather for money unless she didn't have it.

Q. Suppose your father had given your mother money and she had spent it?

A. She wouldn't have asked him to pay for her furniture if she knew her husband was supporting her.

Q. You are not influenced in your attitude towards your father by the fact that he and your mother are not living together?

A. No.

Q. It is the way he treated you?

A. Yes.

Q. What did he do to you?

A. He went off and left us without any money. He hasn't supported me. He started all the suits, and he has married again, and he doesn't send me any money. I have no money for my board, my clothes or anything.

Q. He started what suits?

[fol. 58] A. The Building & Loan suit started against my mother.

Q. You mean recently?

A. It has been recently, I think.

Q. The Building & Loan suit that I am representing your father in?

A. Yes.

Q. And that you testified in a few months ago?

A. Yes.

Q. It is your understanding that he started that suit against your mother?

A. I believe my mother started that suit against my father.

Q. You don't know who started that suit?

A. There are several suits.

Q. Name a suit that your father started against your mother or your mother's people?

A. He hasn't started any against me.

Q. Do you know any suits he has started against your mother or your grandfather?

A. I guess I have been testifying in these suits. He has been fighting them. That Building & Loan belonged to my mother. It was made out to my mother.

Q. What Building & Loan?

A. The Building & Loan shares that he had.

Q. Who told you that?

A. My mother.

Q. That is where you got the information that he brought the suits against your mother and your grandfather?

A. I have been testifying.

[fol. 59] Q. It is your mother who told you that your father quit furnishing money before the divorce?

A. No. I knew when my grandfather came and got us and took us home that he had quit paying.

Q. But the fact that your father divorced your mother, that doesn't influence you against your father?

A. Well, I don't think it was quite right,

Q. And that does influence you, doesn't it?

A. Yes, it does, because I don't think it was quite right to leave my mother.

Q. And that is the main thing?

A. No, he left both of us.

Q. Did you want your father to take you to live with him when he got the divorce?

A. No, I wanted to stay with my mother.

Q. Is your attitude towards your father the same as it was when you wrote this letter from Belmont dated "Friday, 3-29?"

A. Yes.

Q. And you feel the same way towards him now?

A. I do.

Q. Do you think that was the proper sort of letter to write your father under any circumstances?

A. I didn't want to see him and he knew it.

Q. And although your attitude towards your father is one of contempt, you expect him to support you?

A. Until I am able to support myself. He is my father.

Q. And you don't think you owe any duty toward him at all?

[fol. 60] A. No, he went off and left me.

Q. And you recognize no obligation to him at all?

A. No.

By Mr. Lyles:

Q. Sadie, have you ever been asked to go to Atlanta and live with your father since he has been married a second time?

A. No.

Q. Has he ever offered to take you to Atlanta to live?

A. No.

Q. I believe you corrected your statement that you were in this school in Belmont the whole year?

A. Yes. By his saying the first of the year, I was thinking of the first of the school term.

Q. You were there the whole nine months?

A. Yes.

By Mr. Nettles:

Q. If at any time since the divorce your father had asked you to live with him in Atlanta, you wouldn't have done it, would you?

A. No, I wouldn't have cared to have gone.

Q. You wouldn't have gone?

A. No, sir.

SUSIE YARBOROUGH, being duly sworn, says:

Direct examination.

By Mr. Lyles:

[fol. 61] Q. Mrs. Yarborough, you are the mother of Sadie?

A. Yes.

Q. She has testified that she was sixteen last July. Is that correct?

A. Yes, sir.

Q. Where was Sadie born?

A. Here in Spartanburg, in 1914,

Q. When were you and Mr. Yarborough married?

A. September 3, 1904.

Q. Where did you live for a considerable period of time after you were married?

A. I had to come back to my father. My husband had no job, and my father asked us to come here, and gave him a job with the telephone company.

Q. Approximately how long did he live here and hold that position?

A. He went to work with the Southern Bell Telephone Company around 1904 or '05, just a few months after we were married, and he kept that position until about 1909. About five years he was with the Company.

Q. Where did you live? In the home with your parents?

A. Not all of the time: Right after I married, I tried keeping house and kept that up for a couple of years. My father gave us the home to live in.

Q. Later, did you live in the home with your parents?

A. Later I went to Mrs. Poinier's and boarded there; then later we went to live with my father, after Mr. Yarborough started on the road.

Q. How long did that continue?

[fol. 62] A. That continued until we went to Atlanta to live. I will say, in the meantime, I went to Augusta and lived for a few months.

Q. Was he in Augusta?

A. Yes, he made his headquarters there and he would come in every few weeks. Then I lived in Columbia for awhile. Then I would come back to my father's to live.

Q. Was that with his consent?

A. Oh, yes. He was on the road, and we tried different ways of living.

Q. That was agreeable with you?

A. Oh, yes. At that time it was perfectly agreeable.

Q. You went to Atlanta about when?

A. It was in the early part of September, the 5th or 6th of September, 1927.

Q. Was that at Mr. Yarborough's invitation?

A. Indeed it was not. It was at my request and insistence.

Q. Did he object to your coming to Atlanta or not?

A. Mr. Yarborough strongly objected to our coming to Atlanta. He said it interfered with his business and his mode of living, and he put up every excuse.

Q. How did you manage to go then?

A. He finally wrote and said he would have to take a week off and bring us down there to get us settled. He finally came to Hendersonville and got us. We stopped by [fol. 63] Spartanburg and gathered up a few necessary things. Then he took us down to Atlanta to live.

Q. Where did you live in Atlanta?

A. We first stayed at the Ansley Hotel until we could find an apartment that suited us. Then we lived on Ponce de Leon Avenue. Mr. Yarborough went with us. The price was perfectly agreeable with him. He signed the contract.

Q. What was the price for the apartment?

A. The price was $82.50 a month, unfurnished. That did not include a garage.

Q. What sort of an apartment was that?

A. It was a four-room apartment; four rooms and bath.

Q. Were they nice apartments or not?

A. It was very comfortable.

Q. How long did you remain in that apartment?

A. It was June of 1927, when school was out. I think it was the 17th day of June I left.

Q. Did you state the date you went to Atlanta?

A. I said I thought it was about the 5th or 6th of September, 1926.

Q. Where did you go when you left Atlanta?

A. Mr. Yarborough brought me as far as Spartanburg and said he couldn't go any further with me. He took the train here and went back to Atlanta. I remained over night here with my parents, and the next day went to Hendersonville, N. C.

Q. Was Sadie with you at that time?

A. Not at that time. Mr. Yarborough and I had agreed to let her go to the Camp Fire Girls' Camp at Toccoa, Geor-
[fol. 64] gia. She was to spend two weeks there.

Q. Did she later join you in Hendersonville?

A. Yes, she later joined me. I went down as far as Greenville, and I met her in Greenville and carried her back to Hendersonville.

Q. Did he give you an allowance while you were in Atlanta?

A. Yes.

Q. How much?

A. $20.00 a week for the running of the house and necessary expenses. Outside of that he gave me $100.00 to dress Sadie and myself on and any extras I needed.

Q. State whether or not you had a servant or did your own work?

A. I did my own work except my washing and ironing. I did have a servant girl come in once a week and gave a thorough cleaning to the apartment for me.

Q. Something has been said about the divorce suit. Do you recall when the suit was begun?

A. The suit was begun in September, 1927, after I left Atlanta.

Q. Brought by Mr. Yarborough against you?

A. Yes.

Q. Was anything said about that suit before you left Atlanta?

A. Mr. Yarborough threatened me all through life with a divorce. Whenever he wanted me to do something and I objected, he would threaten me with a divorce.

[fol. 65] Q. The suit was started how soon after you left Atlanta?

A. Well, I left there the middle of June and the suit was started the first week of September the same year, 1927.

Q. You know when the divorce was granted?

A. The divorce was not final until June 7, 1929. It took a year and eight or nine months for it to go through.

Q. You had attorneys who represented you in that case?

A. Yes, I fought the case all the way through.

Q. Do you know when Mr. Yarborough was married after that?

A. No, I don't. There has always been a question about his second marriage.

Objection by Mr. Nettles unless the witness means to prove something definite.

Q. You don't know when they were married?

A. No, I do not know.

Q. Now then, did you and Mr. Yarborough together send Sadie to the school at Belmont the first time?

A. Yes, it was perfectly agreeable to Mr. Yarborough, and he paid all the bills.

Q. When you sent her there in September, 1929, do you know whether he knew that you were sending her there or not?

A. No, he didn't know it.

Q. You didn't acquaint him of that?

A. No I didn't, because $1,750.00 had been given to sup-

[fol. 66] port Sadie, and there was no question as to how it was to be spent. It was to be spent at my and my father's discretion.

Objection by Mr. Nettles. Objection sustained.

Q. You got the $1,750.00 that you speak of?

A. My father first got it and then it was turned over to me.

Q. Did you use that for the maintenance and support of Sadie?

A. I used that and some of my own.

Q. You got $1,750.00 at the same time?

A. I got a check for $1,750.00 on January 28, 1929. I had to use some of that for Sadie until I could get hold of hers. Hers was not paid in for months after that, and we finally had to institute a suit against Mr. Yarborough to collect it.

Q. What did you do with the $1,750.00 that your father turned over to you for Sadie?

A. I spent it for her schooling——

Q. Did you make a deposit of that?

A. I deposited an even $1,000.00 of the $1,283.00. That came out of the foreclosure of the mortgage.

Q. Where did you deposit it?

A. I deposited it in the Bank of Commerce.

Q. Did you draw on that account for expenditures?

A. I drew some and Sadie drew some.

Q. Have you the checks for those expenditures?

A. I have checks to cover $1,750.00 and more.

Q. Where did you deposit your $1,750.00?

A. In the First National Bank.

[fol. 67] Q. In your own name?

A. Yes, sir. Sadie's was deposited in her name.

Q. Will these checks show all of the expenditures?

A. They certainly will. There was some that I can't show, because it was spent when we went to New York.

Q. Why did you go to New York?

A. I went there to try to get a position.

Q. When?

A. It was the latter part of July, 1929.

Q. Did you take Sadie with you?

A. I took Sadie with me.

Q. Why did you take Sadie with you?

A. Because I thought I was going to find a position and make that my home.

Q. Did you have any way to earn a living at all?

A. I did not, but a friend had told me that I could stay at her home until I could get a position.

Q. Did you try to get a position?

A. I tried to get a position but failed.

Q. You got a part of this $1,750.00 for Sadie when?

A. I got $1,283.00 in July of 1929. That was the first installment.

Q. Up to that time, from the time the divorce was started until you got this $1,283.00, what had come from Mr. Yarborough for Sadie's support?

A. I had nothing separate for Sadie. For Sadie and me, Mr. Yarborough first agreed to give us $200.00 a month. A little later Mr. Yarborough asked for a reduction of [fol. 68] alimony, and asked that it be reduced to $100.00.

Q. What was he paying when the divorce was granted?

A. $50.00 a month for the support of Sadie and myself.

Q. What sort of business was Mr. Yarborough engaged in at that time and is now?

A. Mr. Yarborough at that time was in the candy brokerage business and is still in that business.

Q. What do you know about his income up until the time that you were divorced?

A. He gave in his income between ten and twelve thousand dollars.

Objection by Mr. Nettles.

Q. Did he tell you that or not?

A. I have a letter.

By the Master:

Q. What is your source of information?

A. Income Tax Department. I gave it to Mr. Yarborough.

Mr. Nettles: I object to the witness' testimony. If Mr. Lyles wants to get copies of Mr. Yarborough's income tax returns from the government and put them in evidence, Mr. Yarborough not only will not object, but he will sign any paper necessary for Mr. Lyles to obtain them.

[fol. 69] Cross-examination.

By Mr. Nettles:

Q. Mrs. Yarborough, divorce proceedings were commenced in September, 1927?

A. Yes.

Q. During that time under order of the Court, Mr. Yarborough paid you and Sadie monthly alimony, did he not?

A. Yes.

Q. And he paid the amount that the Court required him to pay, did he not?

A. Well, yes.

Q. I will ask you if the smallest amount he paid wasn't $100.00 a month instead of $50.00?

A. No, the smallest was $50.00.

Q. When the divorce suit was concluded, he was granted a divorce, was he not?

A. Yes.

Q. And an order was passed in the case under which you received $1,750.00, and your father received $1,750.00, as Trustee for Sadie?

A. Well, I received $1,750.00, and I and my father together were made Trustee for Sadie.

Q. Aren't you mistaken?

A. I may be, but that was our impression of it.

Q. Anyhow, $1,750.00 was paid by your husband under the decree of the Court for your daughter?

A. Yes, sir.

Q. What did you understand the $1,750.00 for you was for?

[fol. 70] A. I understood that was to be used as I saw fit.

Q. And that that was all Mr. Yarborough would ever be required to pay you?

A. No, I asked for a settlement in Atlanta. I was asked to accept $3,500.00, which after much hesitation, I accepted. Later, my attorney had a conference with Mr. Yarborough's attorney, and he came back and said that I wasn't to receive but $1,750.00 and Sadie was to receive $1,750. $3,500.00 was for both of us.

Q. Whatever you were to receive, you understood that was in full for all time?

A. No, I understood that $3,500.00 was to be for me, and I signed it under protest.

Q. Signed what under protest?

A. I signed that $1,750.00 agreement under protest.

Q. You mean the decree of Court?

A. Yes.

Q. To whom did you protest?

A. I protested to my attorney, and he said that Mr. Yarborough had said that if I didn't take that settlement, that he would file bankruptcy proceedings and I wouldn't get anything.

Q. Don't you know that bankruptcy proceedings don't affect a decree for alimony?

A. I certainly didn't know it at that time, and my attorney gave me no information regarding it.

Q. In other words, your attorney deceived you?

A. He certainly did.

Q. As to the $1,750.00 that was paid for Sadie, what did you understand that was for?

[fol. 71] A. That was to be used as my father saw fit. There was no time limit on that at all. That was to be used for her maintenance, her schooling, and her general upkeep, as we saw fit.

Q. And you understood that at any time you wanted some more for Sadie you could go back and get it?

A. Yes, sir, my attorney told me that when that was spent for Sadie's support, I had the right to ask more for her support. There was no time limit on that $1,750.00 at all.

Q. So your father turned it over to you and you put it in the bank and whenever Sadie wanted money, she drew a check against it?

A. No, Sadie didn't always draw the check, because as a minor I didn't think she should know how it ought to be spent, and as her mother, I tried to figure what was best for her.

Q. Didn't you instruct the bank to honor Sadie's checks on that account?

A. Yes.

Q. And Sadie drew when she wanted to?

A. Sadie always wrote and told me when she wanted money. Sometimes I would send her a blank check and tell her to fill it out for that amount. As a rule, while she was at school, I drew the checks and sent the money to her.

Q. When you and Sadie went to New York in July, 1929, you went to get a position?

A. Yes.

Q. Whom did you stay with?

A. We had to stay at the hotel, because the friend I was [fol. 72] supposed to stay with was taken violently ill.

Q. Who was that?

A. Mrs. W. J. Martin, a New York woman.

Q. Did you have any position in mind when you were up there?

A. No, but she thought she could help me to find one.

Q. What sort of position did you expect to get?

A. I was willing to take anything where I could start making money.

Q. Were you especially fitted for any particular work?

A. No, I hadn't especially fitted myself for anything particular. I had worked at the telephone office, and I knew book work, and that was about all I knew.

Q. Didn't you think you could get anything to do up there that would be sufficient to support you and Sadie on and maintain you?

A. I didn't think I could do it right away, but I thought in time one position would lead to another.

Q. You didn't stay with your sister up there?

A. No, she lived too far out.

Q. Why carry Sadie up there until you had gotten a position?

A. Sadie had this money in the bank at that time. It was supposed to be used for her upkeep.

Q. And you think that involved a trip to New York?

A. If she was going to live with me, I think the child's place was with me. The trip to New York was not solely a pleasure trip.

[fol. 73] Q. You testified that when you sent Sadie to Belmont after the divorce, that you didn't tell Mr. Yarborough she was there?

A. No.

Q. You didn't want him to know where she was?

A. She had requested that he not know where she was.

Q. She didn't want to see him?

A. She didn't want to see him. She had told me so.

Q. Were you willing for her to see him?

A. I left the matter entirely with Sadie. In Atlanta I told her she could use her discretion about it.

Q. Were you willing for her to see him?

A. If she wanted to see him, that was all right.

Q. Didn't you tell Sadie that you didn't want her to see him?

A. No, I never did. Sadie didn't have to be told anything. She was big enough when he commenced leaving us to have a mind of her own, and she knew exactly how she felt about the matter.

Q. I am now speaking of the time subsequent to the commencement of the divorce suit. Have you been willing from

the time that suit was commenced on for Sadie to see her father and go on trips with him?

A. Yes, sir, I have been willing, but she would get upset and cry, and beg me to take her where her Daddy couldn't find her.

Q. He would take her sometimes?

A. Yes, she went with him because my father and I forced her to go.

Q. Weren't you ruled for contempt in the divorce suit [fol. 74] because you had not let Sadie see her father?

A. I don't see how you could get that idea, because if I was ever cited for contempt of Court, I never knew a thing about it.

Q. After the divorce was started, you did nothing to prevent him from seeing her?

A. No.

Q. But she was continually telling you that she didn't want to see him?

A. Yes.

Q. What did you tell her then?

A. I told her as long as it upset her so and the Court said that she didn't have to see him, I would do as she asked.

Q. What do you mean by do as she asked?

A. On one occasion he was coming to see her and she got so nervous and upset that she asked me if I wouldn't take her down to Spartanburg for the week end.

Q. So you did take her away that time when he was coming to see her?

A. Yes.

Q. On other occasions didn't you prevent him from seeing her?

A. No, on one occasion I spent my own money and took her to Columbia to meet him. He promised to reimburse me for that and never did.

Q. Did he see her then?

A. He saw her then.

Q. Did he see her apart from you?

A. No, because I told him, "You take Sadie and take her [fol. 75] where you want her", and he said, "No, we will all stay together."

Q. Was that after the divorce suit was started?

A. Yes.

Q. Is this what you want the Court to understand: That personally you had no objection to his seeing her according to the terms of this Court order, but that Sadie very much objected to seeing him, and that on account of her objection, you did at times help her to avoid seeing him?

A. Yes.

Q. And that is why you didn't let him know that she was at Belmont?

A. She asked that I send her off to school somewhere so he couldn't find her, because every time she saw him it meant trouble and got her upset.

Q. And that is why you sent her to Belmont to school?

A. Yes. That wasn't the only reason though.

Plaintiff rests.

Defendant offers in evidence certified copy of the record of the suit of W. A. Yarborough, Plaintiff, vs. Susie B. Yarborough, Defendant, in the Superior Court of Fulton County, Georgia.

Mr. Nettles: Your Honor, Mr. Lyles and I have an agreement that in so far as the divorce law of Georgia is applicable to the case, whether statutory or judicial decisions, that either one of us, at any stage of the case, may offer in evidence any statute, or may use any statute or any [fol. 76] Georgia decision without formally offering it in evidence, but merely by notifying the other side.

W. A. YARBOROUGH, being duly sworn, says:

Examination by Mr. Nettles:

Q. How old are you, Mr. Yarborough?

A. Forty-six.

Q. When did you marry your present wife?

A. August 10, 1929.

Q. You and she live in Atlanta, I believe?

A. Yes, sir.

Q. In an apartment on Ponce de Leon Avenue?

A. Yes, sir.

Q. What rent do you pay for the apartment?

A. $50.00 a month including the garage.

Q. You have no one else in family?

A. No, sir.

Q. Sadie Yarborough here is your daughter?

A. Yes, sir.

Q. With reference to the property you have: What are your household goods worth?

A. Around $300.00.

Q. How many rooms in your apartment?

A. Two rooms and a bath.

Q. What is your business, Mr. Yarborough?

A. Candy broker, salesman.

Q. As a candy broker, does it require a great amount of capital?

A. Only for the traveling expenses per month.

Q. So far as the goods are concerned, how is that handled?

[fol. 77] A. The goods are billed by the manufacturers and collected for.

Q. Billed to whom?

A. Billed to the jobbers we sell.

Q. You don't buy and sell the candy?

A. No, sir.

Q. You act as a salesman or broker?

A. Commissioned salesman.

Q. You are broker for a number of candy manufacturers?

A. Yes, sir.

Q. In what territory do you sell candy?

A. Virginia, Carolinas, Georgia, Florida, Alabama, Mississippi, Louisiana and Tennessee. We do not have the accounts for any one manufacturer for more than one or two states.

Q. How many salesmen have you employed to assist you in covering that territory now?

A. Two.

Q. How many did you formerly have?

A. At times I have had five at one time.

Q. When did you have five?

A. During three or four years ago.

Q. Then you cut down to four?

A. Yes, sir.

Q. When was that?

A. I believe I had four until sometime early last year.

Q. And then you cut to what?

A. Cut to three.

Q. And now you are cut to what?

A. Two.

[fol. 78] Q. Has the candy business been bad?

A. Well, the financial records give it as paying less dividends than any business in the United States today. A majority of the salesmen are off the road, and there has been something like forty per cent. failures of our jobbers. There have been a great many failures of manufacturers that I represent, who owe me commissions.

Q. Do you own the automobile that your salesmen drive?

A. I never have furnished a salesman with an automobile.

Q. What is your plan of doing business with reference to that?

A. I get five per cent. commissions as the contract with the manufacturers. These salesmen that I have in the territory get four per cent. of the five. They furnish their own cars and are supposed to pay their own expenses.

Q. If you advance any expense money, they are presumed to refund it?

A. Deduct it from their commission account on a four per cent basis at the end of the month.

Q. Have you an automobile, Mr. Yarborough?

A. I believe six more payments and she is mine.

Q. What sort of a car is it?

A. Oldsmobile.

Q. How much did you pay for it?

A. $1,070.00, I believe.

Q. What do you owe on it?

A. I owe about $400.00.

[fol. 79] Q. What other property have you, Mr. Yarborough?

A. I have five shares of Marlboro Cotton Mill stock.

Q. What is that worth?

A. There is no value on it whatever.

Q. I show you this A. G. Furman Company Cotton Mill Stock Quotation dated January 21, 1931, and ask you what that stock is quoted at there?

A. Marlboro Mills, asked fifteen.

Q. What is the bid?

A. No bid.

Q. What other property have you?

A. None except the judgment against Horace L. Bomar and the Building & Loan stock.

Q. What is the amount of the judgment against Bomar?

A. $3,000.00.

Q. I recently obtained that for you in the United States Court?

A. Yes, sir.

Q. How much Building & Loan stock?

A. About $320.00.

Q. It is the five shares that is in the name of your daughter Sadie?

A. That is right.

Q. And your recollection is that it is about $320.00?

A. Yes, sir.

Q. I will ask you whether that stock and this $3,000.00 that Mr. Bomar owes you have not been attached in this very action?

[fol. 80] A. Yes, sir.

Q. What other property have you?

A. None whatever. That is every bit of property that I have.

Q. A great deal has been testified about the property you had at the time of the divorce suit. I believe Mrs. Yarborough filed a cross bill in the divorce suit and attached to it a statement of the property she alleged you then owned?

A. Yes, sir.

Q. The first thing listed in that schedule is your office equipment and fixtures in the Hurt Building in Atlanta. What were they worth and what became of them?

A. I sold and gave away those fixtures and got about $175.00 for them.

Q. Next, is interest in Atlanta Candy Company?

A. That firm went in bankruptcy about two years ago.

Q. What did you get out of it?

A. Nothing.

Q. The next item is a one-fourth interest in a house and lot in Dunedin, Florida?

A. Yes, sir, a little more than a year ago the three of us who owned the place put a mortgage of $2,250.00 or $2,500.00 on it, and it was owned by Percy Nivens, Walter Suter and my one-fourth interest. The proceeds of this mortgage, with the exception of about $50.00, went to pay taxes and insurance and other things against the property.

I think since that time, just recently, the property has been [fol. 81] sold for the mortgage. None of us were willing to put any more money in it.

Q. Do you think you have got any equity in it?

A. No, sir.

Q. The next is one-half interest in twenty-nine lots on Shade Mountain, Birmingham, Alabama. What about that?

A. Well, the real estate depression came, and we decided to build houses on that, and the property was lost to the Building & Loan, because those that we had sold to turned the property back on us.

Q. And it was foreclosed?

A. Yes, sir.

Q. The next is the five shares of Marlboro Cotton Mill stock. You have testified about that?

A. Yes, sir.

Q. The next is mortgage against McDowell & Hammond, $4,000.00. What about that?

A. That is what we sued Horace Bomar for and just got a judgment.

Q. Is it correct that that $3,000.00 judgment plus the $1,283.00 paid Mr. Blowers for Sadie represents that property?

A. Absolutely.

Q. Next, five shares of stock Carolina National Bank. What about that?

A. Paid another $500.00 for it.

Q. Explain that. The Bank failed and you had to pay the stockholder's liability?

A. Yes, sir.

Q. Did you pay?

A. Yes, sir.

[fol. 82] Q. The next is fifty shares Building & Loan taken out in 1926, Carolina National Bank. That really was Spartan Building & Loan, was it not?

A. Yes, sir.

Q. What has become of that?

A. That went to pay Mrs. Yarborough and Sadie.

Q. Have you gotten anything out of that fifty shares?

A. No, sir.

Q. Didn't I collect about $400.00 for you and send you the proceeds?

A. That was from the bank transaction, but was that from the Building & Loan?

Q. Anyhow, at most you didn't get over $400.00 out of it?

A. No.

Q. You had a deposit in the bank?

A. Yes, sir.

Q. Out of the transaction of paying the stock liability and settling a note that you had at the bank, you got about $400.00?

A. Yes, but that didn't come out of the Building & Loan.

Q. There were fifteen shares of Building & Loan too?

A. That was all in the same transaction.

Q. Here is a diamond ring?

A. I still have that.

Q. What is it worth?

A. I don't know. As I recall, it cost me about $110.00 or $125.00 eighteen years ago.

[fol. 83] Q. Mr. Yarborough, with reference to your earnings, let's take, first, the last ten years. Have you paid any income tax at all the last ten years?

A. One time, a few dollars, and I think the amount was around $14.00.

Q. Mr. Yarborough, what are your living expenses in Atlanta, you and your wife?

A. Well, it is $50.00 a month for the apartment and the garage, and I would say not over $50.00 to $60.00 a month additional.

Q. You travel all over your territory, do you?

A. Yes, sir.

Q. In an automobile?

A. Yes, sir.

Q. Your traveling expenses are pretty heavy, are they?

A. Yes, sir.

Q. Take last year, 1930, deduct your traveling expenses but do not deduct your living expenses in Atlanta. How much did you make last year, net?

A. About $1,600.00.

Q. That was just about what it cost you to live, wasn't it?

A. Yes, sir. I am perfectly willing to state that I had some other expenses, which were met with loans on insurance policies. That is all that has kept me going for the last three years or so.

Q. Can you borrow any more on those insurance policies?

A. I borrowed last fall on the last one.

Q. On the same basis what did you make in the year 1929?

[fol. 84] A. Business has been very bad. It wouldn't vary over two or three hundred dollars. Hasn't for three or four years.

Q. In 1928?

A. As I just said, it wouldn't vary over two or three hundred dollars for the last three or four years.

Q. Is there any year in the last ten years when you have made as much as $5,000.00 above your traveling expenses?

A. No, sir.

Q. What would you say would be the average for the ten years?

A. It wasn't quite so bad just after the war, and I would say the average would be $2,000.00 for the ten-year period.

Q. Have you made a full disclosure of all the property you own?

A. Absolutely, of everything.

Q. Now, Mr. Yarborough, I want to ask you if commencing with the beginning of the divorce suit if you had any difficulty in seeing Sadie?

A. I had all the difficulty in the world.

Q. I will ask you whether or not Mrs. Yarborough was cited to show cause why she should not be punished for contempt, in the divorce suit?

Objection by Mr. Lyles on the ground that the record is the best evidence. Objection overruled.

A. Yes.

Q. Were you present when that hearing was had on that citation?

A. Yes, sir.

[fol. 85] Q. Was Mrs. Yarborough there?

A. Yes, sir.

Q. Were her attorneys there?

A. Yes, sir.

Q. Was Mr. Blowers there?

A. Yes, sir.

Q. State what Mrs. Yarborough's attorney had to say?

Objection by Mr. Lyles. Objection sustained, and answer taken on the excluded sheet.

Q. State what happened there in open Court?

A. The Judge called on Mrs. Yarborough, and he made a very lengthy and heated charge, and he said, "Madam, I want you to understand that the dignity of my Court has to be upheld, and if this thing ever occurs again, I will not let you off."

Q. What thing?

A. "Not complying with my order for you to see your daughter at the time as set forth."

Q. And what did Mrs. Yarborough's attorney say?

A. He assured the Judge that it would never occur again, and Mrs. Yarborough's attorney went back and talked to Mr. Blowers.

Q. Did Mr. Blowers say anything to you on that occasion about it?

A. Yes, sir, after the Court was over, Mr. Blowers talked to me and told me that he was going to take charge of these things from here on, and that I could depend on him to see that that Court order was complied with.

[fol. 86] Q. After that time did you make any further efforts to see Sadie after the divorce was granted?

A. Yes, sir.

Q. Tell the Court the difficulties you had?

A. I had the same difficulties. I drove from Atlanta during the winter with snow and ice on the ground and got to Hendersonville, after having my car towed for a good many miles, to find that Mrs. Yarborough and Sadie had left.

Q. Did they know you were coming?

A. Yes, sir, I notified them by mail that I was coming.

Q. Was that one of the week ends that you were entitled to see her?

A. Yes, sir.

Q. I will ask you if you don't know of your own knowledge that there is now a citation outstanding against Mrs. Yarborough on account of her failure to let you see Sadie?

A. There is.

Q. Did you make other efforts to see her?

A. Yes, sir.

Q. How many times between the time that you commenced that divorce suit in September, 1927, and the present time have you seen your daughter, except in Court?

A. I would say five, and I have been to see her about fifteen, and I drove as far as four hundred and six hun-

dred miles to get there to comply with the Court's order to be there on that date.

Q. And did they know you were coming?

A. I notified them by letter each time. On one of these [fol. 87] occasions, I called up and asked for Mrs. Yarborough at the hotel, and they said she was out. I asked to speak to Sadie and she came to the 'phone, and I said, "Sadie, are you ready to go with me?" She said, "I don't know Daddy" She said, "Mother is not here, and I don't know whether or not she will let me go."

Q. Did you see her on that occasion?

A. No, sir.

Q. I believe you did see her twice at Belmont?

A. Yes, sir.

Q. That was after the divorce decree?

A. Yes, sir.

Q. Did you take her anywhere the first time?

A. We went over to Charlotte, and I wanted to keep her over the week end, but she had dinner with me and I took her back to Belmont.

Q. Why didn't you keep her over the week end?

A. Because she said she didn't want to stay.

Q. What was her attitude towards you?

A. She was very indifferent; seemed to be for the reason that I had my mother along.

Q. Did she ask you for any money?

A. Yes, sir.

Q. Did you give it to her?

A. Yes, sir.

Q. Do you recall how much it was?

A. I think it was $5.00.

Q. Did you write her from time to time during that period?

A. I wrote her from time to time and usually sent her a dollar or two in the letters. I sent her packages of candy and other presents regularly.

[fol. 88] Q. Did she answer your letters?

A. Very few.

Q. How many letters did you get from her after the decree of divorce?

A. Not over two or three.

Q. When did you make your second trip to Belmont?

A. That must have been in February, 1930.

Q. A year ago, about?

A. Yes, sir.

Q. How did you find out that she was at Belmont?

A. I had been unable to find out where Sadie was, but I found out from my mother.

Q. She picked up the information and passed it on to you?

A. Yes, sir.

Q. When you went up there last February, state what happened?

A. I went in and a sister was sitting in the office, and I told her that I was Sadie Yarborough's father and that I would like to see her, and she told me to have a seat in the next room and she would send for her. Sadie came down and she told her that her father was in the parlor and wanted to see her. Sadie turned around and started back upstairs, and the sister called to her and said, "Sadie, come back here. Didn't I tell you that your father was here to see you, and you must go right in the sitting room", and she came in.

Q. What did she have to say?

A. For five or ten minutes she wouldn't say anything [fol. 89] but "yes" or "no". Before I left, she was more friendly.

Q. Did she say anything about money?

A. She said that her grandfather hadn't sent her some spending money that he had promised, and that she owed the girls and I believe a little store about $3.00, and I think that I gave her five one dollar bills.

Q. Did you say anything to her about going anywhere with you?

A. Yes, I asked her to go with me, and she said that there was going to be something over at the boys' school and they were going over there that night, and she couldn't go.

Q. What was her attitude in that conversation. Was she affectionate or not?

A. No, sir, she was very distant.

Q. How did that affect you, Mr. Yarborough?

A. Well, it worried me more than anything in the world, for Sadie and I have always been very close to each other. She has gone with me on a great many trips, would always

be with me when I was home, going around town calling on the trade, I would take her.

Q. She is your only child?

A. Yes, sir.

Q. When did she begin to get cool and distant?

A. After these divorce proceedings were started.

Q. Mr. Yarborough, did you ever discuss your domestic affairs with your wife in the presence of Sadie.

A. No, sir.

[fol. 90] Q. You heard her testimony here this morning about that?

A. Yes.

Q. Was her recollection right about that?

A. No, sir.

Q. Did you ever send Mr. Blowers any money to send Sadie to you on?

A. After he told me that he was going to take things in charge and that I could look to him to see that I saw Sadie, I sent a check for her to meet me.

Q. Where?

A. In Columbia.

Q. Did she come?

A. She finally came, not at that time, later, and her mother was with her.

Q. Did you want to see her alone?

A. Yes, sir. That was the Court order.

Q. You and your wife were badly estranged at that time?

A. Yes, sir.

Q. Did your wife let you see her alone?

A. No, sir.

Q. My recollection is that Mrs. Yarborough testified that you didn't want to see Sadie alone, said that you would all stay together there in Columbia. Is that correct?

A. No, sir, that is not correct.

Q. Mr. Yarborough, did Mr. Bomar advise you that Mr. Blowers was demanding the payment of the balance of several hundred dollars to Sadie?

A. Yes, sir.

[fol. 91] Q. Did you write Mr. Bomar or come to see him about it?

A. Came to see him.

Q. And what did you tell him?

A. Told him I had this Building & Loan stock and I would go down and see if they would let me have the money.

Q. When you went down, what did they tell you?

A. They told me they were not loaning any money. I said, "Well, I have got to have some money and have always gotten it here." They said, "All right, go ahead and let us know how much you want." I put up the Building & Loan stock as collateral for the cash loan.

Q. What size loan?

A. I don't remember just the amount of that loan.

Q. Did you get the money at that time to pay off the balance that you owed Sadie?

A. Yes, sir.

Q. You didn't pay it off then, did you?

A. I was ready. I told Mr. Bomar I was ready to pay it.

Q. And if Mr. Bomar didn't tell Mr. Blowers that, it was not your fault?

A. No, sir.

Q. And the next thing you knew, they attached?

A. Yes, sir.

Q. I believe then Mr. Blowers for Sadie claimed that five shares of Building & Loan that stood in her name?

A. Yes, sir.

[fol. 92] Q. And I believe there is a suit pending about that?

A. Yes, sir.

Q. What other suit grew out of the matter?

A. They have attached this judgment against Bomar in this suit, Mr. Blowers has.

Q. After your last visit to see Sadie at Belmont, which you testified about, did you a few days after that get this letter which is in evidence here, in which she said she didn't want to see you again?

A. Yes, sir.

Q. What effect did that have on you, Mr. Yarborough?

A. It hurt me very much.

Q. Did you make any further effort to see her?

A. I decided then that I would drop the matter.

Q. Did you write her any more after that?

A. No, sir, I thought there was no cause in the world for her being so disrespectful to me. I have always wanted

Sadie and wanted to be with her and make every effort to make her happy, and want her now.

Q. Are you willing to take her in your home?

A. I certainly am, and would be glad.

Q. Do you think that in time you could get her to overcome her present attitude towards you?

A. I don't know, sir. I certainly would hope so, and make every effort.

Q. Do you recall approximately what Sadie's expenses at Belmont were when she was there the first year?

A. Her tuition was something like $300.00, and we had to buy the uniforms and things for her, and I think the bill [fol. 93] was $90.00 or $100.00.

Q. Did those items include her room and board?

A. Room and board and books.

Q. I believe you paid her expenses there for a full year?

A. Yes, sir.

Q. About what would they total?

A. Possibly it was $50.00 or $75.00 more for incidentals, little classes that she wanted to join and things that she wanted to contribute to and other small expenses.

Q. Mr. Yarborough, Mrs. Yarborough testified that you paid all the alimony that the Court ordered you to pay during the divorce trial, but she insisted that at the last you were only paying $50.00 a month.

A. She is wrong about that. I never paid less than $100.00; paid $200.00 to start with.

Q. And the Court reduced it to $100.00?

A. Yes, sir.

Q. And you paid that until the final decree?

A. Yes, sir.

Q. Mr. Yarborough, do you recall anything else that you want to testify to in this connection?

A. Nothing, except that I might say I would like to have my daughter with me, and I would do everything in my power to make her happy, and nothing would make me happier.

Q. What is your attitude about supporting her under the present circumstances?

A. The only way that I could support her would be for her [fol. 94] to come and stay at our home, at least during the school term.

Q. You mean you couldn't afford to send her to a boarding school?

A. Yes, sir.

Cross-examination.

By Mr. Lyles:

Q. Mr. Yarborough, has Sadie ever declined to go and visit with you in Atlanta?

A. Yes, sir.

Q. When?

A. A number of times.

Q. Did you ever ask her to come and spend the week end?

A. I did.

Q. When?

A. During the time of the divorce proceedings and since.

Q. When and where?

A. The last time at Belmont School.

Q. What time of the year was that?

A. That must have been in the spring of '29.

Q. Did you send her the money to come to Atlanta on?

A. Told her that I would give it to her and did send the money.

Q. How much money did you send?

A. Sent, I believe, $10.00 for her to meet me in Columbia.

Q. She met you in Columbia?

A. In company with her mother.

[fol. 95] Q. Did you expect her to go to Columbia unaccompanied?

A. I did.

Q. When was that?

A. I couldn't give you the date exactly.

Q. About when?

A. That must have been in the late fall of '28.

Q. So that was two and one-half years ago, about?

A. Yes, sir.

Q. And she was then approximately fifteen years old?

A. Yes.

Q. Where were you when you notified her to meet you in Columbia?

A. I was on the way to Columbia to spend the week end, working that territory.

Q. Did you write or wire?

A. I wrote, sent the check, and tried to call long distance.

Q. Where were you when you wrote?

A: Some point in South Carolina.

Q. You had no objection to her mother accompanying her to Columbia?

A. Yes, sir. The Court order in Atlanta said she was to come alone.

Q. Come alone where?

A. At wherever I might designate, that would be convenient for me. I came for her a number of times at Hendersonville and was refused and when I got there she had been taken away on two or three occasions, to keep from seeing me.

[fol. 96] Q. How many times?

A. I think three times.

Q. Was that before or after the divorce?

A. That was during the time that the divorce proceeding was pending.

Q. Wasn't Sadie an affectionate daughter before you were divorced?

A. Yes, sir.

Q. You had no criticism to make of her at all?

A. No, sir.

Q. She wrote loving letters?

A. Yes, sir.

Q. What is your criticism of her now?

A. I have never seen a child as bitter towards her father without any reason, as she is at the present time.

Q. Has Sadie ever been invited to your home by your present wife?

A. Because of the remarks that she made the last two or three times that I saw her and the letters that she wrote, I don't think there is any father that would press that matter any further, she being influenced by her parents and grandparents against her father.

Q. Before those visits or letters was she ever invited by your present wife?

A. I wasn't married then, but she was invited to come to Atlanta by me over long distance telephone, I think twice.

Q. By whom?

A. By myself.

[fol. 97] Q. The present Mrs. Yarborough has never invited her into her home, has she?

A. Certainly not, under the conditions.

Q. Did you expect Sadie to go into the home without an invitation on the part of Mrs. Yarborough?

A. I think I have asked Sadie to visit me once since I have been married.

Q. When was that, Mr. Yarborough?

A. That must have been in the fall of '29.

Q. Was that the last time you have invited her to Atlanta?

A. Possibly the spring of '30.

Q. Where were you when you invited her in '30?

A. At Belmont.

Q. No invitation so far as you know has ever gone from the present Mrs. Yarborough?

A. No, sir, not to Sadie, but Mrs. Yarborough has said to me that she would be very glad to have Sadie.

Objection by Mr. Lyles. Objection sustained.

Q. Did you ever notify or tell Sadie that you were married a second time?

A. The only notice was an announcement that was sent out.

Q. Did you send her one?

A. I didn't sent it personally, but one was sent to her at Hendersonville.

Q. You never did tell her that you were married or write her a letter that you were married?

A. I saw her twice afterwards, in October and nearer Christmas.

[fol. 98] Q. When was the first time she found out you were married?

A. The announcements were sent in August.

Q. You never wrote her a line that you were married?

A. No, sir, only talked with her.

Q. That was in October after you were married in August?

A. The first time I think was in October.

Q. She expressed great surprise?

A. She said that she didn't want to see me or any of my family, including my wife and mother, and her remarks were very bitter and uncalled for.

Q. Mr. Yarborough, you spoke of the grandparents trying to embitter Sadie against you. Which grandparents you mean?

A. Mr. and Mrs. Blowers.

Q. Will you just tell us what Mr. Blowers has ever said to you in the way of prejudicing Sadie against you?

A. Only the things that Sadie has said. Just came out very clearly in the course of conversation in trying to talk with her.

Q. When?

A. Almost every time that I would see her, when I would talk to her about coming down to see me.

Q. You have had conferences with Mr. Blowers, haven't you?

A. Several, yes, sir.

Q. What has been his attitude? Hasn't it been a kindly attitude?

[fol. 99] A. Yes, sir, and he has promised to do things that he hasn't done.

Q. What?

A. He promised to see that I saw Sadie at the times this Court order decreed.

Q. You were seeing her when you called for her?

A. No, sir, not more than one-third of the time.

Q. Did you call that to Mr. Blowers' attention?

A. Yes, sir, wrote him and talked to him.

Q. He has declined to let you see Sadie?

A. No, sir.

Q. Why do you charge him then with prejudicing her against you?

A. I would say to Sadie, "I would like for you the next time I am to see you to come to meet me", and the substance of her remarks would be that she was told by her mother and grandparents that she didn't have to see me.

Q. What about Mrs. Blowers? Have you ever had any conversation with her about Sadie?

A. I don't believe I have.

Q. You mentioned her awhile ago?

A. I just mentioned what Sadie said.

Q. Where was Sadie when she told you that?

A. With me on these week end trips or at school at Belmont.

Q. Where did you go on some of the week end trips with Sadie?

A. I believe I went from Hendersonville to Greenville once and to Asheville once; Spartanburg once and Columbia once.

Q. Any others?

[fol. 100] A. I don't recall.

Q. Neither her mother or the Blowers offered any objection, did they?

A. Yes, sir. I called up for Sadie.

Q. Who offered the objection?

A. Sadie stated that she didn't know whether she could go or not.

Q. Where was she then?

A. Hendersonville; that she would have to ask her mother's permission.

Q. You would certainly expect her to notify her mother when she was leaving?

A. Yes, sir, but this was week ends that I had notified them that I would be there for Sadie.

Q. You knew she was in good hands, didn't you?

Objection by Mr. Nettles. Objection overruled.

Q. You thought she was in good hands or you wouldn't have let her stay there?

A. I certainly wouldn't have let her stay there if it hadn't been forced on me.

Q. How about the Blowers? Did you let her stay there? Was that forced on you?

A. No, sir.

Q. I would like to know if either Mr. or Mrs. Blowers have ever indicated to you that they were prejudiced against you, said or done anything that indicated their malice toward you?

A. One thing, in promising to see that I would get to see Sadie at these specified times and not fulfilling it. In conversation with Sadie, she would always tell me what her [fol. 101] grandfather and grandmother said that she should or should not do.

Q. Did Sadie ever tell you that the grandparents, Mr. and Mrs. Blowers, said she shouldn't visit you on week ends or go into your home?

A. She said that they told her she didn't have to go.

Q. Is that all that was said?

A. Well, no, that was the end of the conversation; what it amounted to.

Q. How many times have you ever sent Sadie money to come to visit you?

A. Most of the time I came for her.

Q. Have you ever sent her the money at all to go to Atlanta?

A. I offered it over the telephone. She refused to come.

Q. When was that?

A. During the divorce proceedings. I went on to Hendersonville to try to get her.

Q. Since the divorce have you ever offered to give her the money to come to Atlanta?

A. I have.

Q. When?

A. The last time I saw her, and gave her money at that time for spending money.

Q. Mr. Yarborough, don't you know that Sadie wouldn't be welcome in your home? Isn't that a fact?

A. No, sir.

Q. I mean by your wife?

A. That is not a fact.

Q. Your wife has never spoken to Sadie?

[fol. 102] A. Has never had the opportunity.

Q. Has never had the opportunity to write her?

A. Not under the circumstances.

Q. Except what Sadie has told you neither Mr. nor Mrs. Blowers has ever in any way tried to prejudice Sadie against you?

A. It is very conflicting that they tell me just the opposite of what Sadie says.

Q. Mr. Yarborough, Sadie has been a very obedient daughter all her life?

A. Up until the time the divorce started.

Q. Was she not an obedient daughter after that?

A. No, sir.

Q. In what way was she disobedient?

A. In her remarks, attitude, and things that I asked her to do, and in her letters that are right here in evidence.

Q. She didn't want you to get married, did she?

A. I don't know.

Q. Don't you know she didn't?

A. I couldn't answer that.

Q. You don't know that? Didn't she tell you so?

A. No.

Q. In one of the letters you have introduced, I find this sentence, "As you are trying to get out of supporting mother and me and don't love me enough to come home and stay with us all the time and insist on a divorce, so you can keep on running around with other women, I don't care to see you, nor spend my week ends with you." You know why she didn't love you in the same way?

[fol. 103] A. Do you want to open up a real subject and go into this matter?

Q. No, sir. I want to know Sadie's attitude towards you up until the time the divorce was begun and the reason for her change in attitude?

A. I think we had better go into that matter thoroughly and start at the beginning. The reason for Sadie's change in attitude were the things told her by her mother that were not true.

Q. When did you discover that change in attitude?

A. I discovered it the first time that I tried to see her after the Court order for me to see her every second week end, possibly before that.

Q. This is the letter that came in that envelope, isn't it?

A. I couldn't say, but I think it is.

Q. This envelope bears date October 27, 1929, postmarked Charlotte. There is nothing in that to say that Sadie had changed her attitude toward you?

A. That is a letter from me.

Q. And there was nothing in that letter to indicate that Sadie was disobedient?

A. I tried to stay away from those things and overlook them as much as I could, hoping that her attitude would change.

Q. And wasn't all her letters just as a loving daughter would write?

A. No, sir.

Q. When did they change?

A. About the time the divorce proceedings were started.

[fol. 104] Q. She went to school in Belmont with your consent, didn't she?

A. My consent against my will. I didn't want her to go. I saw that Sadie had to have some care and that was a last resort.

Q. You didn't think she was getting the care where she was?

A. No, sir.

Q. Wasn't she in the home of the Blowers at that time?

A. No, sir.

Q. Where was she?

A. Mrs. Blowers and Mrs. Yarborough had had arguments.

Q. Did you hear them?

A. A little of some of them. Was told about most of them by Mrs. Yarborough.

Q. When was that?

A. That was during the time that we were deciding on sending Sadie to school.

Q. Was the argument about where she should go?

A. There were some arguments.

Q. Who suggested that she go to Belmont?

A. Mrs. Yarborough.

Q. You approved of it, didn't you?

A. There was nothing else for me to do. She was put out of her own father's house.

Q. Who was put out?

A. Mrs. Yarborough.

Q. When was that?

A. Several times.

[fol. 105] Q. Well, when? What year?

A. I couldn't give the dates.

Q. Who told you she was?

A. She told me herself.

Q. Did Mr. Blowers ever tell you that?

A. No, he never told me that exactly, but he has talked about her conduct and the trouble they were having.

Q. And she reported that her father put her out of the house?

A. Yes, sir.

Q. What about Sadie? Was she put out too?

A. Naturally Sadie had to go with her mother.

Q. Was Sadie put out?

A. Not to my knowledge.

Q. Sadie is the one we are talking about in this case. Hasn't Mr. Blowers been good to Sadie?

A. I think he has been very good to Sadie.

Q. And don't you know that Sadie is well taken care of in the Blowers' home?

A. As far as Mr. and Mrs. Blowers are concerned, yes, sir.

Q. You have no objection to her living there?

A. Not if she would live with me part of the time.

Q. Have you ever made an honest endeavor to get Sadie to live with you?

A. Most honest.

Q. And you never said a word to Mr. Blowers or Mrs. Blowers about it?

A. Yes, sir.

Q. Where?

[fol. 106] A. Here and in Atlanta; that I wanted Sadie to live with me part of the time.

Q. What did Mr. Blowers say?

A. He said that I could look to him to see that the Court order was complied with.

Q. Did you ever tell him that the Court order wasn't complied with?

A. Yes, sir.

Q. Where and when?

A. In person and I believe over the telephone.

Q. You recall when?

A. I don't know the exact date.

Q. What would you think would be a reasonable allowance for the support of Sadie? She is seventeen years old?

A. I would like to see Sadie have everything in the world that I could give her.

Q. Well, in her station in life, what would you say would be a fair allowance monthly for her support and education?

A. Of course if she were living in the home with us, the expense would be much less than it would be if she were away at school.

Q. In the home with you, what would it cost to support and educate her?

A. You would have to make it in accordance with what you had to spend.

Q. In the light of the circumstances existing now, what would you think she would be entitled to for support and education?

A. She has already had a settlement of enough to take [fol. 107] care of her for at least four years, in my opinion.

Q. You think $1,750.00 would do it for four years?

A. Yes, sir, living in a home with Mr. and Mrs. Blowers or with us in Atlanta, going to the public schools.

Q. And your judgment is that you have done all that you ought to do for her?

A. Yes, sir, the Court in Georgia decreed a final settlement.

Q. Who represented Sadie in any proceeding?

Objection by Mr. Nettles. Objection overruled.

A. Mrs. Yarborough's attorneys.

Q. That representation is in this proceeding then?

Mr. Nettles objects on the ground that the proceeding speaks for itself.

Q. If she was represented, it is shown in the Court proceeding?

A. I answered the question.

Q. If Sadie should live with you in Atlanta, you would have to get another room, wouldn't you?

A. We are moving to a larger apartment this month; would have done so long ago if there had been any chance or any notice from Sadie that she would visit us or live with us.

Q. Mr. Yarborough, who is the W. A. Yarborough Candy Company?

[fol. 108] A. There isn't any W. A. Yarborough Candy Company.

Q. Have you been shipping candy into Spartanburg with those labels on it since Christmas?

A. No, sir.

Q. You didn't ship the Geer Drug Company?

A. No, sir.

Q. How recently have you shipped Geer Drug Company candy with a W. A. Yarborough Candy Company label on it?

A. Never.

Q. You have no interest in any candy company?

A. Only as a commission salesman.

Redirect examination.

By Mr. Nettles:

Q. Mr. Yarborough, is it true that these candy companies that you represent are shifting from time to time?

A. Yes, sir.

Q. Take the last five years, how many different candy companies at one time or another have you represented during that period?

A. Guessing about 250.

Q. Is it true that the bulk of your business is always for a comparatively few companies?

A. Yes, sir, that is on my personal territory.

Q. If Sadie indicated her willingness to go with you, would there be any trouble with your present wife?

A. None whatever.

Q. She would be glad to have her?

A. Delighted.

[fol. 109] Q. And if she will treat you with proper respect, do you want her to come?

A. I do.

Q. Mr. Yarborough, the way your business has been going the last year or two, are you able to support her except in your home?

A. No, sir.

SADIE YARBOROUGH, recalled, says:

Direct examination.

By Mr. Lyles:

Q. Miss Sadie, when you went to Columbia to visit your father on the occasion mentioned in the testimony heretofore, what was said by him, if anything, about your separating from your mother or just remaining with them?

A. As soon as we got there, my mother said for us to go ahead, that my father had a man with him, Mr. Suiter, and my mother told us to go ahead and that she would meet us at the station when the train was ready to leave. My father insisted that she go with us, that we could all have dinner together.

Q. You and your mother went on the train?

A. Yes.

Q. Do you know whether your mother paid her own expenses?

A. My father sent money for me to come; my mother paid her own expense.

Q. State whether or not you have ever declined to go with him on any week end visit or any visit he has asked you?

A. He wrote me and told me that I was old enough to decide for myself whether I wanted to see him or not, and I [fol. 110] wrote and told him that I didn't care to see him, and didn't care to go with him on any of his trips.

Q. Was that the letter that was read here a few minutes ago?

A. I think it was.

Q. Your father said that a notice of his marriage was sent out. Did you ever get any such notice?

A. I never knew he was married until my mother told me. It was sometime in October, the latter part of October.

Q. Your father testified that your mother told him that your grandparents, the Blowers, would decline to let you see him at various times. Did they ever decline to let you go anywhere?

A. No, they have never declined at all. They have never influenced me at all. I was old enough to decide for myself what I wanted to do, and I did it. I have never been influenced anyway by any of my parents or grandparents either.

Q. When you went from Hendersonville to make the visit, who came up to see you?

A. My grandmother and grandfather were going on a trip at that time and they came up and saw me go off with my father.

Q. Is there any occasion that you recall that you declined to visit with your father?

A. None.

Cross-examination.

By Mr. Nettles:

Q. How long has it been since you haven't wanted to go with your father or haven't wanted to see him?

[fol. 111] A. I don't know the exact date, but my father had promised to stay home and stay with us and take care of us, and he left us. Of course my attitude changed when he treated me unkind.

Q. I want you to tell us how he treated you unkind?

A. He left us three times.

Q. I am talking about you?

A. He left me too. He didn't leave me with any money either.

Q. At the other reference we went over all this that you want to go into again, and my recollection is that it came down to this: That you said the real reason why you lost your love for your father and didn't want to see him was because you thought he had mistreated your mother by getting married again?

A. No, he had a perfect right to marry again if he wanted to. That wasn't my only reason for changing my attitude. He left us without any money. He went to Memphis once, and he promised to come back and stay with us.

Q. Do you think that if your mother had been dead he would have left you?

A. I don't know; I expect he would. He would have left me with my grandparents I am sure. He wouldn't have stayed home with me. He ran around all the time.

Q. What do you mean by that?

A. With different women.

Q. Do you know that?

A. I do; he told me in front of my mother.

[fol. 112] Q. You want the Court to believe that your father told you that he was running around, in an immoral way, with women?

A. Yes.

Q. I am going to ask you again what I asked you at first: About when was it that your attitude toward your father changed?

A. My attitude changed when he left us.

Q. The divorce proceeding was commenced in September, 1927. Relative to that date, about when was it?

A. I can't give you any date.

Q. Was it before or after the divorce proceedings started?

A. It was just before.

Q. A few months before?

A. Yes.

Q. While you were living in Atlanta?

A. Yes.

Q. About this trip to Columbia, your father sent for you to come, didn't he?

A. Yes.

Q. Did he send for your mother?

A. No.

Q. Why did she go?

A. She thought that I was too young to make the trip alone. She saw me safely there.

Q. How old were you then?

A. I believe I was about fifteen.

Q. And you never went anywhere on the train alone when you were fifteen?

[fol. 113] A. I had never been any distance alone, and I had never been to Columbia either.

Q. Your father was going to meet you there?

A. Yes.

Q. If your mother put you on the train here and your father met you there, don't you think a fifteen-year old girl could make that trip?

A. My father was supposed to call for me on the second and fourth week ends.

Q. Did you resent the fact that he didn't come for you instead of sending for you?

A. No.

Q. Did you want to make that trip?

A. Yes.

Q. You wanted to see your father?

A. It was all right. The Court had said I was to see him. If I had to, I was willing to. I had written to my father several times and told him that I didn't care to see him any more.

Q. So you didn't want to go, and felt that you were going because you had to?

A. Yes.

Q. You knew that your father didn't want to see you with your mother?

A. He wasn't going to. My mother was to wait there for us. She told us so.

Q. He was just to see you between trains?

A. For that day, I think that was.

Q. He wanted you for the week end?

A. I don't remember what day it was we came up. There was some reason why we didn't stay. I remember I was just to stay the day.

[fol. 114] Q. Did your father seem very glad to see your mother that day?

A. Yes. He took us all to lunch.

Q. He had to take your mother to lunch?

A. No, he didn't, my mother said she would stay there in the station.

Q. While you all went to lunch?

A. Yes, or did what we wanted to.

Q. You got down there Saturday?

A. I don't remember.

Q. You got down Saturday and he wanted you to stay until Sunday. That is what you call a week end?

A. Yes.

Q. Was your mother willing for you to stay with him for the week end?

A. Yes. I don't know what day I got there. I didn't take a grip or anything. I got there with the intention of just spending the day.

Q. Did your father know that you were coming with that intention?

A. I am sure he did.

Q. Didn't he expect you to spend the week end with him?

A. No.

Q. What did he tell you over the 'phone?

A. He wrote to me and sent the money.

Q. Didn't he tell you how long he wanted you to stay with him?

A. I was only to stay the day out, I think, because I would have taken a grip with me if I had intended to stay over the night.

[fol. 115] Q. I don't doubt that your mother didn't intend for you to stay over the week end, but I am asking you if your father didn't expect you to stay over the week end?

A. No.

Q. He expected just to have lunch with you and you would come back?

A. Spend the day, yes.

Q. Had you told him so before you got there?

A. I imagine so.

Q. You think you wrote him and told him that you would be down there on the morning train and were coming back on the afternoon train? Have you got any recollection about writing him that?

A. I don't remember how the trip was arranged at all, except that he wrote and sent the money.

Q. Did he send it to you?

A. Yes, sir.

Q. And you don't know how long he expected you to stay? You didn't consult his wishes about that at all?

A. He arranged it. If he sent the money, I am sure he arranged it beforehand.

Q. Did you consult his wishes about how long you were to stay?

A. I don't remember what his wishes were.

Q. If you had known his wishes, would you have been guided by them?

A. There wouldn't have been any sense in just going to stay a day, if he wanted me to stay longer.

Q. That was after the divorce proceeding began, wasn't it?

[fol. 116] A. I think it was. Yes, I am sure it was. The decree was gotten out after the divorce proceedings were started.

Q. Your mother was very friendly with your father at the time of that Columbia trip?

A. I know that she let me go with him.

Q. Was your mother friendly or not towards your father at that time?

A. Yes, she didn't have anything against him.

Q. She didn't mind his getting a divorce?

A. She didn't want him to leave us. She tried to keep the home together.

Q. When she found he insisted on getting a divorce, did she feel kindly towards him after that?

A. No, not as much so as before.

Q. Don't you know she was bitter towards him?

A. No, I heard my mother say that she still loved my father.

Q. You never heard her say anything unkind about your father?

A. No.

Q. Never have?

A. No.

Q. Sadie, about your not riding on the train alone. Don't you recall that back when you were five or six years old several times your grandparents put you on the train here in Spartanburg and sent you to your mother in Hendersonville?

A. No, sir.

Q. You never made a trip like that alone?

A. No, my grandfather always took us up in the car whenever I was to go up.

[fol. 117] Q. You are sure that you never made that trip alone?

A. Yes.

Q. Have you ever been from here to Charlotte or from Charlotte here alone back in those years?

A. No.

Q. When was the first time you ever made a trip alone?

A. I haven't made very many train trips. Last year when I was over at school, I have come from Belmont over here alone.

Q. Make any bus trips alone?

A. I came on the bus then; it wasn't on the train.

Q. You testified just now that Mr. Blowers never told you not to go with your father?

A. No, he never has.

Q. Did he ever tell you that you ought to see him?

A. Yes, sir.

Q. You didn't pay any attention to him?

A. I have seen my father every time that he came for me.

Q. Did you go alone with him every time that he has come for you?

A. Yes.

Q. How about the time that he came up to Hendersonville and you told him that your mother wasn't there and you couldn't go?

A. I didn't tell him that I couldn't go. I always ask my mother's permission for everything even now.

[fol. 118] Q. You knew your father was coming?

A. Yes.

Q. Why hadn't you gotten permission before hand?

A. He didn't say when he was coming; just said he was coming up on the week end. I didn't know what day.

Q. I believe you testified that you were not influenced by anything that your mother or grandparents have said to you. Is that what you want the Court to understand?

A. Yes.

Q. You mean you decide everything for yourself?

A. I am old enough to decide for myself what I wish to do.

Q. How long do you think you have been old enough to decide everything for yourself?

A. I don't decide everything for myself. I am old enough to decide certain things for myself and form my opinions since I have been about twelve years old.

R. D. BLOWERS, recalled, says:

Direct examination.

By Mr. Lyles:

Q. Mr. Blowers, Mr. Yarborough testified that Mrs. Yarborough, his former wife, your daughter, told him that you had ordered them out of the house, away from your home?

By Mr. Nettles: I don't think that the record will show that; that he had ordered her, not the child.

[fol. 119] Q. Ordered her then. It that true or not?

A. No.

Q. He also testified that Mrs. Yarborough told him that you wouldn't let Sadie see him when he wanted to. Is that true?

A. Not a bit of truth in it.

Q. State whether or not you have at all times endeavored to have Sadie comply with the Court order when requested by Mr. Yarborough?

A. I have gone out of my way and gone to expense to see that she did it, as far as I could control her.

Q. Have you ever at any time tried to prejudice Sadie against her father or endeavored to keep her from seeing her father?

A. Positively no. On the reverse, I have done everything in my power to have her see him.

Q. Has she seen him, so far as you know, when requested?

A. Yes, sir.

Q. State whether or not you have taken her to Hendersonville and other points to meet her father, or at your own expense?

A: Yes, sir. In one instance, I drove from Spartanburg to Hendersonville to see that she did see him.

Q. When was that?

A. I don't remember the date, but I had planned to go to Norfolk in the car, and I heard about this, and I changed my route and drove to Hendersonville. While I was there, her and her mother packed a grip and took her to town to see him.

[fol. 120] Q. Do you recall any other time that you have endeavored to comply with his request to see her?

A. In every case, that he was due to see her, I persuaded her and talked with her and her mother that she should see him.

Cross examination.

By Mr. Nettles:

Q. Mr. Blowers, Sadie didn't want to see her father?

A. Well, I believe not, because I knew the circumstances and I knew why.

Q. Why was it, Mr. Blowers? Was it the divorce?

A. No, it was other women.

Q. What about other women?

A. All I know is from the conversation that Mrs. Yarborough has had about other women.

Q. And she had a chance to prove it in Atlanta and never proved a word of it?

A. I don't think she had a chance to. It didn't come up.

Q. And Sadie's mother had told her about that, had she?

A. The conversation was all together. Mrs. Yarborough said Sadie was present while they talked about these things.

Q. You weren't there, were you?

A. No, sir.

Q. Mrs. Yarborough didn't want Sadie to see her father?

A. She didn't tell me so.

[fol. 121] Q. Isn't it a fact that she did it under compulsion of the Court?

A. Not that I know of.

Q. Did she want Sadie to see her father?

A. So far as I know, she did.

Q. You say that your daughter told you that the reason she and Sadie were at outs with him was on account of his going with other women?

A. Yes, sir.

Q. And yet you say that your daughter never said anything to indicate that she objected to Sadie going with her father?

A. No.

Q. She was perfectly agreeable to it as far as you could see?

A. As far as I knew.

Q. Mr. Blowers, after the divorce was granted, didn't you tell Mr. Yarborough in Atlanta that you knew there was nothing to that talk of your daughter about other women?

A. I don't remember any such conversation.

Q. Will you deny that?

A. Yes, sir, positively.

Q. You deny that you had any conversation of that sort with him at all?

A. Yes, sir.

Q. Did you talk with him after the divorce?

A. No, it was before.

Q. About the time of the divorce?

A. There was nothing said about that.

[fol. 122] SUSIE YARBOROUGH, recalled, says:

Direct examination.

By Mr. Lyles:

Q. Mrs. Yarborough, you recall the visit to Columbia that has been mentioned?

A. Yes.

Q. Did you offer there on that occasion to leave Mr. Yarborough and Sadie alone for the day and meet them at the train?

A. I did, Mr. Lyles. It was my own suggestion. Mr. Yarborough was supposed to see Sadie on the second and fourth week ends. When he wrote to Sadie, it was not the second or fourth week end on the calendar. I looked that up, but to keep Mr. Yarborough from saying anything, I took her down anyway. The Court order said she was to see him after school on Friday until midnight on Sunday.

At the time he asked to see her, he said he would meet her on Sunday morning in Columbia, at least he thought he would get in in time. He said he was not positive what time the train came in, and for Sadie to wait there in the station for him or else go across the Street to the Gresham Hotel. Bearing in mind the fact that he had one time previous to that sent just a common chauffeur for Sadie, I undertook to take her down there myself. I paid my own expense down there. Sadie had never been to Columbia. She knew absolutely nothing about the city. I knew there was a lot of cheap restaurants and such stores down there, and as I had always been with Sadie or had a nurse for her, I preferred that she not take the chance of being alone in case Mr. Yarborough didn't come in. Also, as I said, it [fol. 123] was Sunday. Sadie was supposed to be with him until midnight on Sunday. According to the train schedule, there was no train leaving Columbia whereby she could be back in Spartanburg by midnight Sunday, and that was the reason there was no baggage carried with us. Mr. Yarborough, however, did meet us, in company with a Mr. Suiter, whom I know quite well. I then suggested that he have Sadie alone until time to depart, and on his insistance, we all stayed together. The four of us got in Mr. Yarborough's Ford where we went to the Jefferson Hotel for dinner. I suggested later in the afternoon that I leave Sadie with him, so he could have her alone. He still insisted we stay together, which we did, and sat on the mezzanine floor of the Jefferson Hotel. Everything was very nice and pleasant between us, and Mr. Yarborough had no objections to make whatever.

Q. Mr. Yarborough said that you told him that your father had threatened to put you out of his home. Did you ever tell him that?

A. I certainly did not. If my father hadn't taken care of us, I don't know what would have become of us, because my husband doesn't seem inclined to.

Cross-examination.

By Mr. Nettles:

Q. This loose-leaf book that is in evidence here is in your handwriting?

A. Yes.

Q. When did you make it out?

A. That is a copy made especially for the Court. I kept a copy of my own.

Q. Where is the original?

[fol. 124] A. It is at home. You couldn't read it, because it was scribbled from time to time.

Q. You wrote this up shortly before the last reference, didn't you?

A. Yes, because I knew I was going to be called on to show how the money was expended.

Q. You wrote it from the original account that you have?

A. Yes, sir.

By Mr. Nettles: In view of the witness' testimony, I object to the introduction of the book, on the ground that it is not the original. My position is that Mr. Blowers, as Trustee, is making an accounting of the $1,750.00 that he received as trustee for Sadie, and that we have the right to insist on the production of the original vouchers and the original books of account and that this which was admittedly made up shortly before this trial is not admissible. For the benefit of my friend, I just want to say that I am going to attack the genuineness of the account and the sufficiency of the account.

Objection sustained.

W. A. YARBOROUGH, recalled, says:

Examination by Mr. Nettles:

Q. Mr. Yarborough, I just want to ask you about the Columbia trip?

A. I had written and sent this check for Sadie to meet me Friday afternoon in Columbia, enclosing a stamped envelope, asking her to reply if she would be there. I got no reply, and I called long distance and got no satisfaction. I didn't know that they were coming. Mr. Suiter and I [fol. 125] went to the depot to get some samples and coming through the waiting room, found Mrs. Yarborough and Sadie.

Q. Were you surprised to see them?

A. Very much.

Q. Did you take them to the hotel?

A. Yes, sir.

Q. Did you want to see Mrs. Yarborough on that occasion?

A. Certainly did not.

Q. Why did you take her out to dinner? There was scarcely any way to avoid it, was there, Mr. Yarborough?

A. Mr. Suiter saw that there was an embarrassing situation, and I believe that he suggested taking them to dinner. There was no way then for me to get out of it, as Mrs. Yarborough announced that they were coming back to Spartanburg on the next train.

Q. Mr. Yarborough, was that or not one of the week ends that you were entitled to see Sadie under the Court order?

A. I didn't ask for her on any other week ends.

Q. What was this that Mrs. Yarborough refers to about your sending a "common chauffeur" for Sadie?

A. I have never sent anyone for Sadie, except in the town where we were living, and always when I was at home I took Sadie to school myself, and a great many times went for her and brought her home.

Q. Is there anything else you want to say, Mr. Yarborough?

A. No, sir.

[fol. 126] SUSIE YARBOROUGH, recalled, says:

Direct examination.

By Mr. Lyles:

Q. Mrs. Yarborough, you testified on direct examination that you made a list of the expenditures for Miss Sadie. Look at this and tell us what those are?

A. These are both mine and Sadie's expenditures.

Q. You made up a statement of the expenditures for Miss Sadie. How did you make that up?

A. I had to take it from mine and hers, which was made up together.

Q. Does the list that you submitted represent the expenditures for Miss Sadie?

A. The first list that I submitted does. This is mine and Sadie's together.

Q. Is that where you made the original entry?

A. This is the original, but not in full.

Q. Those do represent the original expenditures as they were made?

A. Each day; in part, because this is not in full.

Q. Was that made from day to day?

A. Yes, and the dates and the year marked on it.

List offered in evidence by Mr. Lyles, marked Exhibit "M".

Objection by Mr. Nettles.

Q. You say this contains yours and Sadie's together?

A. Yes.

Q. Explain why you did that?

[fol. 127] A. When the settlement was made, Mr. Yarborough only gave $1,750.00 in cash, which was mine.

Q. How did you separate Miss Sadie's from yours?

A. I had check stubs for some.

Q. You said this contains yours and Sadie's. How did you separate the items that were expended for her?

A. I have it written down there in nearly every instance, so much for Sadie.

Q. When you paid for those items, how did you pay for them?

A. In many instances ours were together. It was all my money to begin with, and quite often I would pay our bills together. I just simply knew what went to her and what didn't. When I went North, I knew just what her expenses were and what mine were. It was nearly always half.

Q. You say those papers do not contain all of the expenditures for Sadie? What part do they not contain?

A. It contains about everything, as well as I can remember, except the time that we went to New York. I was not able to keep an itemized account of everything while we were away.

Q. Does the statement that you made up from that contain the expenses to New York?

A. Yes, it does; it contains everything.

Testimony concluded.

[fol. 128] EXHIBIT A

Record of Georgia Divorce

On September 21, 1927, W. A. Yarborough filed suit for total divorce against Susie B. Yarborough in the Superior Court of Fulton County, Georgia. The verified complaint alleged that the plaintiff was, and had been for more than twelve months last past, a bona fide resident of Georgia; that defendant was a resident of Hendersonville, N. C.; that the parties were married in 1904; that they had separated in February, 1927; that they had one child, Sadie, aged 12; and that the divorce was sought on the ground of mental and physical cruelty and threats by defendant against plaintiff that made him fear for his life, health and well-being.

The defendant wife was served by publication and on November 25, 1927, she appeared by counsel and filed an answer and cross-bill, the same being verified by her affidavit. By her answer she admitted the formal and denied the substantial allegations of plaintiff's bill. By her cross-bill defendant alleged that she had been a true and affectionate wife, but that plaintiff had been guilty of various acts of physical and mental cruelty toward her, and that he was guilty of adultery. Her prayer was for a total divorce; the custody of the child; an injunction against plaintiff's disposing of his property pending the litigation; "that provision for permanent alimony be made for the support of respondent and the minor child above mentioned and for the education of said minor child"; and "that petitioner be required to pay into court a reasonable sum to defray the [fol. 129] expenses of this action and for counsel fees, and that he be required to pay to petitioner such further sums for temporary alimony for the support of herself and her minor child, during the pendency of these proceedings, as may seem just to the court."

On November 26, 1927, the day after the wife's answer and cross-bill were filed, an order was made requiring the husband to show cause on December 3, 1927, "why the prayer of said answer and cross-bill for temporary alimony and counsel fees should not be granted." On January 12, 1928, a consent order was entered, requiring the plaintiff to "pay to the defendant, Susie B. Yarborough, by the 10th

day of each month the sum of $125.00 per month as temporary alimony for her support, and $75.00 per month for the support of the minor child, Sadie Yarborough, until the further order of the court or the final disposition of this case." Plaintiff was also ordered to pay defendant's attorneys $100.00 "on account of attorneys' fees."

On February 29, 1928, the plaintiff filed a petition for reduction of temporary alimony. The petition referred to the consent order of January 12, 1928, "for the payment of temporary alimony and counsel fees in the above stated case, whereby petitioner was to pay $125.00 per month for the support and maintenance of the said Mrs. Susie B. Yarborough, and $75.00 per month for the support, maintenance and education of their minor daughter, Sadie Yarborough," and set out certain grounds on which he asked the court for "a reduction in said alimony to the sum of [fol. 130] $100.00 per month", and that the total fee of defendant's attorneys be fixed at $100.00. This petition also stated that Mrs. Yarborough was refusing to let him see his daughter except in her presence, and he asked to be allowed to visit his daughter, and to have her with him at specified times apart from her mother. A rule to show cause issued, and a hearing was had before the court on April 17, 1928, on the portion of the petition praying for the privilege of seeing his daughter, and on the same day the following order was passed:

"It is therefore, considered, ordered and adjudged that the plaintiff be and he is hereby allowed the privilege of visiting his said minor daughter, and of having her with him, out of the presence of the defendant, on the second and fourth week-ends of each month, from the close of school hours Friday until Sunday night of said week ends, during school terms, and at like times during vacation; at which times the plaintiff shall be entitled to take said minor daughter on pleasure trips of reasonable distance returning her punctually at the conclusion of the allotted time."

On June 8, 1928, the defendant filed an answer to so much of the plaintiff's petition as sought a reduction in alimony and counsel fee, in which she alleged that plaintiff had not paid the $100.00 attorneys' fee theretofore ordered by the court, and that plaintiff "is in default in the payment of alimony in accordance with the previous order of this court

in the sum of $100.00 for the month of March, $100.00 for [fol. 131] the month of April, $100.00 for the month of May, and $200.00 for the month of June." She asked that the petition be denied, that she have judgment for the above sums, and that the plaintiff be adjudged in contempt.

On June 9, 1928, the following order, omitting caption, was made:

"The foregoing matter coming on to be heard upon the plaintiff's petition for reduction of alimony, and limitation of attorneys' fees, and after the introduction of evidence by plaintiff and defendant thereon, and after hearing from counsel for both plaintiff and defendant,

"It is considered, ordered and adjudged that the order of this Court dated January 12th, 1928, awarding alimony and attorneys' fees to the defendant, Mrs. Susie B. Yarborough, be and the same is hereby revoked, and in lieu thereof, it is considered, ordered and adjudged that from and after the passage of this order the plaintiff, W. A. Yarborough, pay to the defendant, Mrs. Susie B. Yarborough, for the support and maintenance of herself and the minor daughter, Sadie Yarborough, the total sum of One Hundred Dollars ($100.00) per month, to continue until the further order of the Court in the premises, the first payment hereunder to be made for the current month of June, 1928, and that the plaintiff pay to defendant's attorneys, Messrs. Jones, Evins, Moore and Powers and Ralph Williams, a total fee of One Hundred Dollars ($100.00) against which shall be credited all sums heretofore paid during the pendency of said case, to said at- [fol. 132] torneys, which shall be in full of the plaintiff's obligation to pay defendant's counsel in said litigation, said fee to be paid on or before October 1st, 1928.

"It is further ordered that all unpaid alimony which has accrued heretofore under the Court's order of January 12th, 1928 be, and the same is hereby cancelled and the plaintiff is relieved from the obligation to pay the same. Ordered further, that in the event of the failure of the defendant to comply with the Court's order dated the — day of April, 1928, allowing the plaintiff the privilege of visiting his said minor daughter, Sadie Yarborough, at times and places specified in said order, that the plaintiff shall have the right upon due proof of the facts, and after hear-

ing thereon, to an order relieving him of all obligation to pay alimony under this order.

"This 9th day of June, 1928.

(Signed) "John D. Humphries, Judge Superior Court Atlanta Circuit."

On October 24, 1928, plaintiff filed another petition in which he referred to the order of June 9, 1928, in which the court passed upon "petitioner's application to reduce the monthly payments of alimony", and also referred to the last paragraph of said order, regarding plaintiff's right to be relieved from the payment of any alimony to his wife, if she did not permit him to see his daughter, as provided in the previous order of the court. The petition then went on to recite that defendant had prevented petitioner from seeing his daughter in accordance with the [fol. 133] order of the court; that she had attempted to extort money from him by threatening to prosecute him criminally on a false charge, and failing to obtain the money, she had, on July 17, 1928, sworn out a warrant against him in Spartanburg, S. C., charging him with having fraudulently obtained her signature to an assignment to the insurance company of an insurance policy in which she was the beneficiary by representing to her that he was in dire need of funds when he was not, and that he had cashed the check obtained from the insurance company, which was payable to their joint order, and converted the proceeds to his own use; that the truth was that the money was realized by surrendering a policy of insurance on his life, as he could not carry it longer, and that he paid over the money to his wife in cash or used it in paying extravagant bills she had created without his knowledge or consent; that she had caused his arrest on the warrant and his confinement in jail in Atlanta until he waived extradition and went to Spartanburg and made bond; that, while he had managed to pay the alimony provided by the order of June 9, 1928, the expense his wife had subjected him to in connection with the warrant had exhausted his funds and made it impossible for him further to keep up the alimony payments; and that his wife had in her possession an automobile of his, and he desired it sold and the proceeds paid to his wife on account of future alimony payments. The prayer of the petition was for the reduction of "said ali-

mony payments until petitioner has had an opportunity to meet the other expenses forced upon him by the defendant"; that the automobile be sold, and "that the court order [fol. 134] all further payments of alimony, in so far as they are for the support of the defendant, indefinitely withheld until sufficient guarantees are made that petitioner will be allowed to enjoy regular visits with his said minor daughter without the presence of the defendant."

On December 7, 1928, the following order, omitting caption, was filed:

"The petition of plaintiff for a reduction of alimony payments, for the sale of an automobile, and for changes in the order permitting plaintiff to visit his minor daughter, which said petition was filed October 24th, 1928, coming on for a hearing, upon hearing evidence and argument on behalf of both plaintiff and the defendant, it is considered, ordered, adjudged and decreed as follows:

"The court declines to interfere with the possession and ownership by defendant of the automobile referred to in said petition. The court declines to make any change in the order permitting plaintiff to see his minor daughter, and finds that defendant has partly complied with said order of court. It is ordered that the amount of alimony due by plaintiff to defendant be reduced for the months of December, 1928, January, February and March, 1929, to the sum of Fifty Dollars ($50.00) per month for these four months, but that beginning with the month of April, 1929, said reduction shall cease and said payments shall be One Hundred Dollars ($100.00) per month as before the passage of this order.

"The defendant having testified and the plaintiff, W. A. [fol. 135] Yarborough, having also testified that the plaintiff has loaned out the sum of Five Thousand Dollars ($5,000.00) secured by first loans on real estate in Spartanburg, S. C., which loans draw interest at the rate of 7% per annum, it is further considered, ordered and decreed that the plaintiff, W. A. Yarborough, be and he is hereby enjoined from disposing of, or encumbering, or in any other manner changing the status of Four Thousand Dollars ($4,000.00) worth of said first loans until the further order of this court, but that Four Thousand Dollars ($4,000.00) worth of said loans be held without change subject to such

decrees and judgments as have been rendered or may hereafter be rendered in favor of the defendant for alimony.

"This December 7th, 1928.

(Signed) "E. D. Thomas, Judge Superior Court, Atlanta Circuit."

On January 17, 1929, the case was tried to a jury, and they rendered the first total divorce verdict, as follows:

"We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce; that is to say, a divorce a vinculo matrimonii, upon legal principles between the parties in this case. This 17th day of January, 1929.

(Signed) "H. M. Dodd, Foreman."

On January 19, 1929, the following consent order, omitting caption, was made:

"Parties, plaintiff and defendant, having personally, in writing, consented hereto, and their respective counsel of [fol. 136] record having likewise consented in writing hereto,

"It is considered, ordered and adjudged that the following settlement be hereby made the order of the Court, the same being in full settlement of temporary and permanent alimony in said case, and in full settlement of all other demands of every nature whatsoever between the parties:

"The plaintiff, W. A. Yarborough, being the owner of two certain real estate mortgages, each of the principal sum of Two Thousand Dollars ($2,000.00), and bearing interest from their respective dates at seven per cent (7%) per annum, executed by McDowell and by Hammond, said mortgages being first liens upon real estate in the city of Spartanburg, South Carolina, and not having been heretofore transferred, sold or encumbered by the plaintiff, the plaintiff having heretofore been restrained by the order of this Court from disposing of the same,

"It is considered, ordered and adjudged that said mortgages be, and they are hereby transferred, sold and assigned by the plaintiff, W. A. Yarborough, to the defendant, Mrs. Susie B. Yarborough to the extent of One Thousand, Seven Hundred, Fifty Dollars ($1,750.00), and the

plaintiff, W. A. Yarborough, does hereby transfer, sell and assign said mortgages to R. D. Blowers, of Spartanburg, South Carolina, as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, to the extent of One Thousand, Seven Hundred Fifty Dollars ($1,750.00), the said Mrs. Susie B. Yarborough and the said R. D. Blowers as Trustee as aforesaid, shall have the right, at [fol. 137] their option, to pay to the plaintiff, W. A. Yarborough, a sum equal to Two Hundred Fifty Dollars ($250.00) and accrued interest upon each of said mortgages, having an absolute transfer to each of them as aforesaid, on the other hand, or to require that said mortgages be sold and the said Mrs. Susie B. Yarborough and the said R. D. Blowers, as Trustee, each to receive the sum hereinbefore stated and the plaintiff, W. A. Yarborough, to receive the balance of the proceeds of said sale. The amount to be thus received by R. D. Blowers as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure.

"Upon the compliance with this order by the plaintiff, he shall be relieved of all payments of alimony and counsel fees, in said case, except that the payment due under the prior order of Court of the sum of Fifty Dollars ($50.00) for the month of January, 1929, shall be by him paid, in addition to the other amounts hereinbefore named. The plaintiff, W. A. Yarborough, shall comply with the terms of this consent order at the earliest possible date, and at all events not later than January 27th, 1929.

"The provisions of the order of the Court heretofore entered fixing the times and the places when plaintiff, W. A. Yarborough, shall have the right to visit and have with him, out of the presence of the defendant, the said Sadie Yarborough, minor daughter of plaintiff and defend-
[fol. 138] ant, are hereby continued in force.

"This 19th day of January, 1929.

(Signed) "Edgar E. Pomeroy, Judge Superior Court, Atlanta Circuit."

"We, plaintiff and defendant respectively, hereby consent to the above and foregoing order.

"This 17th day of January, 1929.

(Signed) "W. A. Yarborough, Plaintiff. (Signed) Hal Lindsay, Plaintiff's Attorney. (Signed) Susie B. Yarborough, Defendant. (Signed) Wright & Davis, by Jas. C. Davis, Defendant's Attorneys."

On June 7, 1929, as provided by law, the case was again tried to a jury, and they rendered the second total divorce verdict, as follows:

"We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce; that is to say a divorce a vinculo matrimonii, upon legal principles between the parties in this case. We fix the rights and disabilities of the parties as follows: The plaintiff shall be at liberty to marry again. The defendant shall be at liberty to marry again. This 7th day of June, 1929.

(Signed) "Fred A. Cadieu, Foreman."

On the same day, June 7, 1929, the following decree of court in total divorce was entered:

[fol. 139] "Two concurring verdicts favoring a total divorce to plaintiff having been rendered in the within case, it is considered, ordered and adjudged that said marriage be, and the same is hereby annulled and a total divorce granted between the parties, with liberty to the plaintiff to marry again. The defendant shall be at liberty to marry again. Jurisdiction of said case is retained for the purpose of further enforcement of orders of this court heretofore passed. Ordered further that the defendant pay the costs of these proceedings.

"This 7th day of June, 1929.

(Signed) "Edgar E. Pomeroy, Judge Superior Court, Atlanta Circuit."

EXHIBIT B

Defendant offered in evidence the following 9 letters written him by his daughter. Letters Nos. 1, 2, 3 and 4

were written from Sacred Heart Academy in 1925; No. 5 was written from the Academy in 1929, after the divorce suit was ended. Letter No. 6 was written from Hendersonville, N. C., prior to the divorce suit. No. 7 was written from Atlanta, Ga., prior to the divorce suit. Nos. 8 and 9 were written from Hendersonville while the divorce suit was pending.

Letter No. 1

Sacred Heart Academy, Belmont, N. C.

DEAR DADDY: I am having a grand time at the Academy. Mother stayed with me until Thursday. I have a lovely [fol. 140] room on the south. I start classes Monday. I am so glad you are coming up. Try and bring Mother with you. The mosqueters are eating me up. I am afraid I wont be able to write you but once a week. I will have to study some. Am going to write mother now. I have to make up my bed. So will have to close.

Lots of love & Kisses.

Saidee.

Letter No. 2

DEAR DADDY: Thank you ever so much for the funny papers you sent me. I also got the nice box of candy you sent me.

One of the candy dolls were broken but I think I can fix it.

Thank you for the nice ring with the ruby in it.

Our Examinations start Monday.

I am sorry I did not get your letter off sooner.

There is going to be a tenis turment here soon.

I could not make this very long so please excuse me.

Lots of love & Kisses.

Your loving daughter, Saidee.

Letter No. 3.

Sacred Heart Academy, Belmont, N. C.

DEAR DADDY: I wrote you a letter last Saturday and you ought to have gotten it by now. Mother said she didn't

[fol. 141] get her letter I sent her either. I think Sister will let me come over and meet you in Charlotte. The big girls get to go to Charlotte Saturday to the exposition. But the little girls don't get to go, and I am with the little girls so I don't get to go. Thanks ever so much for the check.

I wrote Grandmother Y. the other day. It turned cool the other day and has been cool ever since. Sorry it has turned hot for you.

Lots of love & kisses.

Saidee.

Letter No. 4

DEAR DADDY: I got the sewing basket and things Tuesday, they certainly were cute thanks for them ever so much for them. I got the post cards you sent me yesterday. I sent one to Tuele and one to C. I sent one to Mother too. I got my dress and blanket mother sent me the day I got your package. We go to sewing this afternoon. I got the long round package you sent me just a few minutes ago. It has been nice and cool here ever since you left. We have been having a Test most all this week. I need some more addressed envelops.

Lots of love & kisses.

Saidee.

Letter No. 5

Sacred Heart Ac., Friday, 3, '29.

MR. YARBOROUGH: I suppose just because I saw you that time that you thought that I wanted to see you. Well, you were mistaken. You came unexpectedly and I had to see [fol. 142] you that time but please never try to see me again. I have nothing to feel proud of my father for and it makes me ashamed for the other girls to see him as they ask questions which are very unpleasant.

The money will come in very handy and don't worry yourself about my spending it for candy as I have to count my pennies.

I must quit and write to my dear Mother.

I am hoping she will come to see me Sunday. I suppose you think I can not write letters for myself and that

mother influences me. Well she doesn't in my thoughts towards you.

Please do not try to see me any more.

Saidee.

Letter No. 6

DEAR DADDY, I am having a nice time up here playing. We haven't had much rain. This morning we went down to the store to see an elephant, pony, and a camel. They were going to Brevard and have a show at 2 o'clock. We followed them past the second little bridge where they stop-ed to drink. The Samples left yesterday. I have been riding the pony a whole lot. Yesterday Dave, Billy, Harry, Doodle, Maine Hankon and I went to the creak. Bell the dog swam way out in the water. It was the first time had seen a dog swim. There was a boat way up the creak on a sand bar. Mother has just gotten your letter. Try and come home earlier than you wrote mother so we can go swimming. I am goeing to write a letter to Louise. [fol. 143] I haven't writ-en since she left school.

Lots of love and Kisses.

(Sgd.) Tater-Bugs.

Letter No. 7

Atlanta, Ga.

DEAR DADDY: In your last letter you told me to write to you. I wrote one last week and sent it to Savannah, Ga.

We had to have our books on Georgia in this week and I sure did have to hurry and get mine fixed. We went to the Metropolitan Theater last night and saw The Love Sunya. I want to go to the Howard this afternoon if Mother will let me.

I hope you are feeling better and will come home soon.

I think Grandmother and Par are coming down about the first of April so hurry home.

Lots of love & Kisses.

(Instead of a signature, this letter has a drawing of a kitten.)

Letter No. 8

DEAR DADDY: The Check for me was received and many thanks.

No I am not biting my fingernails now & mother is going to give me a manicure tonight. She has been trying to give me one every week and I am looking for the ring as you promised it. I have all of your letters and you have never asked me for any kodak pictures. I haven't any as my little kodak doesn't take good ones. Would you [fol. 144] rather have a picture instead of me? Mother has always wanted me to have an Encyclopedia as it would help with my school work but I can't enjoy a gift from you if you have to always tell me what you paid for it and how long it will take you to finish paying for it. I would like it but would much rather you put that money toward paying our board for we can't find any nice places to stay for what you send mother for board. If you don't pay our board Par will have to do it and he's had to pay so much for us ever since you have been running away. Please pay our board and give us enough to live on then give me presents later for I think that comes first.

I am to be in a play Friday night and I have been practicing until 5:30 this afternoon. It is to be tomorrow afternoon for children. The play is called old King Cole and I am the Kitchen Boy.

Your daughter Saidee.

Letter No. 9

DEAR DADDY: As you are trying to get out of supporting Mother and me and don't love me enough to come home and stay with us all the time and insist on a divorce so you can keep on running around with other women, I don't care to see you nor spend my week ends with you. When Par has to pay our board and we have to borrow from him & others for our spending money and my school supplies I know you don't love me and as long as you don't I don't want to see you.

You've hurt Mother & me in every way you can. When [fol. 145] you support us & act like a real Daddy then I want to see you.

Your daughter, Saidee.

(The envelope in which the above letter was contained is postmarked Hendersonville, N. C., April 30, 1928. In the same envelope the defendant received the following undated letter from his then wife.)

"These are Saidee's feelings & I did not dictate nor did she copy the enclosed letter. When you do not show love you can hardly expect it in return.

"I did not let her refuse to see you until I was assured. she and I are acting on our legal rights. Saidee & I have both appealed to you from a sense of love, duty, and from every standpoint.

"Support us & I'll try to persuade Saidee you love her. From your wife who loves you & wants you to act right."

EXHIBIT C

Nettles & Oxner, Attorneys-at-Law, Masonic Temple Building, Greenville, South Carolina.

March 31, 1931.

H. B. Carlisle, Esq., attorney-at-law, Spartanburg, S. C.

DEAR SIR:

Yarborough vs. Yarborough

As you know, Mr. Yarborough's daughter is suing him for support, and, as I wrote you some weeks ago, one of [fol. 146] the things I wish to prove is the exact amount that you paid Mr. Blowers in the suit you brought against Mr. Yarborough for the balance of the $1,750.00. The final hearing in the case will be had before the Master on April 10th at 10 a. m. If you will let me have a letter showing the gross amount I paid you, and how you disbursed the same, it will answer every purpose. Otherwise, I will have to ask you to bring your records and testify before the Master on April 10th. You will probably recall my writing you about this some weeks ago, but the matter evidently has escaped your attention. Stamped, addressed envelope is enclosed.

With kind personal regards, I am,

Yours very truly, (Sgd.) Stephen Nettles.

N/S.

(Mr. Carlisle returned the above letter with the following reply at the foot:)

4-1-31.

DEAR SIR: The gross amount collected in the above matter was $642.64. The amount paid to Blowers was $580.95.

This paid March 13, 1930. Regret that I overlooked your last letter.

(Sgd.) H. B. Carlisle.

EXHIBIT D

At the trial before Judge Sease the defendant offered in evidence the following sections of the Georgia Code of 1926 Annotated, and decisions of the Georgia courts:

[fol. 147] "Sect. 2981. (Sect. 2462.) Alimony for Children on Final Trial.—If the jury, on the second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid: and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified."

"Sect. 2982. (Sect. 2463.) Judgments, How Enforced.—Such orders, decrees, or verdicts permanent or temporary, in favor of the children or family of the husband, may be enforced as those in favor of the wife exclusively."

Maddox v. Patterson, 6 S. E. 581.
Coffee v. Coffee, 28 S. E. 977.
Brown v. Brown, 64 S. E. 1093.
Wilkins v. Wilkins, 91 S. E. 415.
Gilbert v. Gilbert, 107 S. E. 490.
Johnson v. Johnson, 62 S. E. 1044.

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY.

DECREE

The decree of Judge T. S. Sease, omitting caption, reads as follows:

The plaintiff, an only child of the defendant, brings this suit by her Guardian ad Litem, R. D. Blowers, for an allowance for her maintenance, education and support, alleging

[fol. 148] that she was sixteen years old at the commencement of this suit (now just passed seventeen); that she has no funds and no means of support whatever, and that if her father, the defendant, is not required to contribute thereto she will be left an object of charity.

By agreement of counsel, this matter was tried before me without a jury. Pursuant to a consent order, the Master took the testimony, which is before me, together with the exhibits The case has been fully argued, and I have given careful consideration to the questions raised.

The defendant's answer admits the minority of the plaintiff, and that she resides with her paternal grandfather, the Guardian ad Litem in this case, but denies substantially all other allegations. He has set up by way of defense, and as a bar to this action, the judgment of absolute divorce, granted to him by the Superior Court of Georgia, a court of competent jurisdiction, on the 17th day of January, 1929. Pursuant to a consent order taken in the divorce case, the sum of Seventeen Hundred and Fifty ($1750) Dollars was paid to R. D. Blowers, paternal grandfather of the plaintiff here, as Trustee, and compliance with this order the defendant sets up as a full and final discharge of all obligations on his part to support and maintain his daughter. The certified record of the proceedings in the divorce case shows that the plaintiff in that case, W. A. Yarborough (defendant in this case), was a resident of the State of Georgia, and that his then *then* wife, Susie B. Yarborough, and his minor child, Sadie Yarborough (plaintiff in this case), were residents and citizens of the State of North [fol. 149] Carolina. In order to enforce any judgment that might be obtained, the plaintiff had certain property belonging to defendant in this State attached. Jurisdiction of the person of the defendant was acquired also by service of the Summons and Complaint, as appears by the return of the Sheriff of this county. Counsel for the defendant concedes that the attachment is regular and raises no question as to the validity thereof. As a result of the attachment, there is in the hands of the Clerk of this Court the sum of Two Hundred, Forty-Five and 55/100 ($245.55) Dollars, and there is on deposit in the Savings Department of the Central National Bank of this City (by agreement of counsel for both parties to this unit), subject to the joint check of said counsel, the sum of Eighteen Hundred and Seventy-five ($1875.00) Dollars.

I do not agree with counsel for the defendant that the testimony, including the records of the divorce proceedings, show that the amount paid to Blowers as Trustee was in fact, or was intended to be, for the *permanent* support of the defendant, his minor child. The order of the Honorable E. E. Pomeroy, Judge of the Superior Court, Atlanta, Georgia, dated January 17th, 1929 (prior to the absolute divorce decree) provides that the sum of $1750.00 to be paid to R. D. Blowers, Trustee, "shall be expended by him n his discretion for the benefit of the said minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure." Then follows the further provision, "upon the compliance with this order by the plaintiff (defendant in this case) he shall [fol. 150] be relieved of all payments of *alimony* (italics mine) and counsel fees in said case." It will be observed that this order does not provide that the father shall not be liable for the further support of his child.

Alimony is defined as the allowance which a husband may be compelled to pay his wife for her maintenance when she is living apart from him or has been divorced. I. R. C. L. 864:

"An allowance of alimony is distinct from an allowance which a husband may be required to pay for the maintenance of the children, and hence alimony is not to be construed as an award for the support of a child of the marriage whose custody is also awarded to the wife." 9 R. C. L. 482.

Section 2981 of the Civil Code of Georgia provides:

"If the jury on the second or final verdict finds in favor of the wife, they shall also, in providing permanent alimony for her, specify the amount the minor child shall be entitled to for their *permanent* (italics mine) support." See Gilbert v. Gilbert, 107 S. E. (Ga. case).

The defendant sets up as a further defense that the plaintiff, his daughter, has been "bitter, insulting and disrespectful" in her attitude towards him, and for that further reason he should not be required to support her. In the matter before me now, I am not concerned with the merits or demerits of the divorce case. In passing, I will

say, that the child's custody having been awarded to the mother,—the then wife of the defendant in this case,—and the child having lived with its mother since the divorce was [fol. 151] granted, it is but natural that she should in a large measure share the feelings and opinions of her mother. I do not think even the attitude complained of will discharge the father from the obligation to support his minor child.

"The legal and natural duty of the father to support his children is not to be evaded by him on the ground of his wrong-doing, or even of any dissentions whatsoever with his wife. A natural father would not think of doing so, and an unnatural one should not be permitted to do so." 9 R. C. L. 481.

It appears that at the time the defendant in this case procured his divorce he had a good income, and it does not appear reasonable to me that he could have been, or intended to be, discharged from the obligation to support his only child, a minor then just about thirteen years of age. The plaintiff has just now arrived at the age of seventeen, ready to enter college, and it is obvious that the allowance heretofore made for her is entirely inadequate to support, educate and maintain her in her station in life, and it necessarily follows, therefore, that the father is bound both morally and legally to see that she is properly provided for.

The defendant demanded an accounting of Blowers, as Trustee for the fund received by him under the Georgia court order. A statement of the fund received by him and disbursements is in the record and counsel for defendant points out no particular criticism except extravagance. I find that the funds received by the Trustee were expended for the maintenance, support and education of the minor [fol. 152] child, and that he has properly accounted for same. Some money was spent with some extravagance but it has required more than trustee had to support the minor up to this time.

Considering plaintiff's station in life, as well as the circumstances of the defendant, her father, I find that the sum of fifty dollars a month allowance for her education, maintenance and support would be fair and just, and it is, therefore,

Ordered that the plaintiff be allowed so much per month, payable in advance, beginning with the date of this order.

The defendant being a non-resident and certain funds having been attached, which are in the custody of this court, it is

Ordered further that R. D. Blowers, plaintiff's paternal grandfather, be, and he is, hereby appointed Trustee to receive and handle the monies to be paid hereunder. The Trustee shall be required to give a bond to the Clerk of this Court in the sum of Two Thousand Dollars as a condition for the faithful performance of his duties as said Trustee. He shall be further required to make reports to the Clerk of Court at least once a year of his receipts and disbursements, which report shall be made not later than the first of September in each year.

It is further ordered that the sums of money in the hand of the Clerk of Court and on deposit to the joint credit of the attorneys for the parties to this proceeding be paid over to the said Blowers as Trustee when he has qualified by giving a good and sufficient bond as required above. From [fol. 153] this money, the Trustee shall expend for the maintenance, support and education of the plaintiff not exceeding Fifty Dollars per month, unless a further order of this court is obtained.

Plaintiff's attorneys have asked for an allowance of fee for their services. It seems proper to me that they should be paid. It has been suggested that an agreement was made with the Guardian at litem in this case, whom I am appointing as Trustee, whereby the plaintiff's attorneys were to receive a fee of Three Hundred Dollars. Considering the fact that an attachment was necessary to bring the funds into court, and several days were required in the taking of the testimony and the trial before me, and that the case was in contest, I think the fee agreed upon is reasonable. It is, therefore,

Ordered that the Trustee herein named shall, upon receiving sufficient funds in his hands, pay to plaintiff's attorneys the said sum.

The plaintiff has leave to apply for such additional orders as may be necessary to carry out my findings hereinabove.

T. S. Sease, Judge Seventh Circuit, at Chambers.

Spartanburg, S. C., August 21st, 1931.

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

NOTICE OF APPEAL

Within due time the defendant served due notice of intention to appeal to the Supreme Court, and now for the purpose of the appeal, makes the following

[fol. 154] EXCEPTIONS

1. Error in not holding that the judgment of the Georgia court in the divorce suit between defendant and plaintiff's mother was res adjudicata of plaintiff's right to support from her father, the defendant herein.

2. Error in not holding that the judgment of the Georgia court in the divorce suit absolved the defendant from further liability for the support of his minor daughter, the plaintiff herein, he having made the provision for her support required by said judgment.

3. Error in not holding that the judgment of the Georgia court in the divorce suit was a bar to this action, being res adjudicata of this defendant's liability to support his minor daughter, and said judgment being binding on the South Carolina courts under Article IV, Section 1, of the Constitution of the United States of America.

4. Error in holding that the judgment of the Georgia court in the divorce suit, and especially the decree therein dated January 17, 1929, did not provide for the permanent support of this defendant's minor daughter, it being respectfully submitted that, upon a proper construction, said judgment and decree did provide for her permanent support.

5. Error in not holding that even if the judgment of the Georgia court in the divorce suit did not provide permanent support for this defendant's daughter, the proper and only place for her to seek further support from this defendant was in the divorce suit, and a South Carolina court [fol. 155] neither had nor would assume jurisdiction to grant the daughter the relief sought in this action.

6. Error in holding that defendant was obliged to support plaintiff, his minor daughter, when the undisputed

evidence showed that she had treated him with the utmost contempt and disrespect, and had repudiated all obligation to him, she being 17 years of age and in no danger of becoming a public charge.

7. Error in holding that defendant was obligated to support plaintiff, his minor daughter, when she, by her wrongful conduct had made it impossible for him to visit her, as the judgment in the Georgia divorce suit permitted him to do, she being 17 years of age and in no danger of becoming a public charge.

8. Error in holding that the $1,750.00 provided by the judgment of the Georgia court for the support of defendant's daughter "is entirely inadequate to support, educate, and maintain her in her station in life, and it necessarily follows, therefore, that the father is bound both morally and legally to see that she is properly provided for." It is respectfully submitted that the judgment of the Georgia court provided $1,750.00 for the permanent support of the daughter; that said judgment was res adjudicata of the matter of support; and that the court below was bound to accord that judgment the full faith and credit required by Article IV, Section 1 of the Constitution of the United States of America.

9. Error in ordering the attached funds belonging to defendant turned over to R. D. Blowers as Trustee, it being respectfully submitted that defendant should be permitted [fol. 156] to furnish a proper bond to secure the payment of the monthly allowance to his daughter and take down his cash.

10. Error in holding that "by agreement of counsel this matter was tried before me without a jury." The case is one in equity, and neither side having proposed issues for a jury, it was properly triable without a jury, and no agreement of counsel was necessary or was had to that end.

Nettles & Oxner, Attorneys for Appellant.

IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

AGREEMENT AS TO RECORD

We agree that the foregoing shall constitute the record for the purposes of the appeal in this case.

Nettles & Oxner, Attorneys for Appellant. Lyles & Daniel, Attorneys for Respondent.

[fol. 157] IN SUPREME COURT OF SOUTH CAROLINA

Case No. 290

SADIE YARBOROUGH, by Guardian ad Litem, etc., Respondent,

v.

W. A. YARBOROUGH, Appellant

Appeal from Spartanburg County

T. S. Sease, Judge

Affirmed

Stephen Nettles, of Greenville, for appellant.
Lyles & Daniel, of Spartanburg, for respondent.

OPINION No. 13436—Filed June 27, 1932

BONHAM, J.:

This is one of those unlovely cases in which the dissensions of parents find their worst results in the unhappiness and hardships of the children born of the unhappy union.

W. A. Yarborough and Susie Blowers were married at Spartanburg, S. C., September 3, 1904. They had one child, who is the plaintiff in this action. In 1927 Mr. and Mrs. Yarborough separated; he lived in Atlanta, Ga., and she and the child in Hendersonville, N. C. September 21, 1927 he brought suit in the Superior Court of Fulton County, Georgia, seeking a total divorce from his then wife. She appeared, answered and filed a cross-bill, praying that a total divorce be granted her.

By a consent order of date November 1927, W. A. Yarborough was required to pay to his wife, as temporary alimony, $125.00 per month, and for support of the child $75.00 per month. By an order of date Feby. 29, 1928 this amount was reduced to $100.00 per month, and by an order of December 7, 1928 this sum was reduced to $50.00 per month for the months of December 1928, and January, February and March 1929 and thereafter to be restored to $100.00 per month.

January 17, 1929 the first verdict was rendered in favor of a total divorce between the parties. On the same day Judge Pomeroy passed an order by the terms of which W. A. Yarborough was required to pay to Susie Yarborough $1,750.00 and to R. D. Blowers, as trustee for Sadie Yarborough, $1,750.00, "the same being in full settlement of temporary and permanent alimony in said case, and in full settlement of all other demands of every nature whatsoever *between the parties.* * * * (Italics added.) The amount to be thus received by R. D. Blowers as trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure."

"Upon the compliance with this order by the plaintiff he shall be relieved of all payments of alimony and counsel fees."

[fol. 158] By the provisions of the order the child remained in the custody of her mother but it was directed that her father should have the right to see her at the times and under the conditions set out in the order.

The payments were made after some delay.

July 7, 1929 the second and total divorce verdict was rendered. The same day Judge Pomeroy passed an order granting to each party a total divorce with the privilege of remarrying. Two months thereafter W. A. Yarborough remarried.

August 10, 1930 Sadie Yarborough, a minor, brought this action by her guardian ad litem, against her father demanding of him the lump sum of $1,000.00, and $125.00 per month thereafter for her support and maintenance.

By his answer defendant sets up as a bar to this action the provisions of the order of the Superior Court of Fulton

County in the divorce suit, by which he was required to pay to R. D. Blowers as trustee of Sadie Yarborough, plaintiff in this action, the sum of $1,750.00, as permanent alimony for her (which payment he made); he further pleaded that the matter of his liability for the support and maintenance of his daughter during minority has been finally and completely adjudicated by the judgment of the Superior Court of Fulton County, Georgia, which judgment is binding on the Courts of this State under Article IV, Section 1 of the Federal Constitution; and that matter is now res adjudicata.

Further answering the defendant alleged that the Superior Court of Fulton County obtained full and exclusive jurisdiction of this plaintiff in the divorce suit between her parents, as well as the matter of his obligations to support her, and if she has any present claim against him it can only be heard in that Court, and the Court in which the action is brought is without jurisdiction to entertain the action.

Further answering the defendant alleged that he is now, and at the time of the order for the payment of the $1,750.00 for alimony, was a man of very moderate means, and that the said sum was and is reasonable provision for the maintenance and support of plaintiff.

Further answering defendant alleges that by the terms of the order of the Georgia Court he was given the right to see his daughter at intervals; that on the occasion of his last visit she was so bitter, insulting and disrespectful in her attitude and language, and wrote him such a painful and uncalled for letter, that in spite of his affection for her, he has not persisted in trying to see her; and he alleges that if he were otherwise liable to support her he should not be called on to do so in these circumstances.

Further answering defendant alleges that he has remarried; that if she will enter his house as a dutiful daughter he and his wife will welcome her, and so long as she maintains that attitude will support her to the best of his ability.

The issues thus joined were referred to the Master to take the testimony; upon the report thereof the case was heard by Judge Sease. August 21, 1931 His Honor filed his decree—from which this appeal comes to us.

The defendant was a resident of the State of Georgia. Jurisdiction was obtained in the Court of Spartanburg County by the attachment of certain property in this State and Spartanburg County which defendant owned, and by serving him personally with the Summons and Complaint, in the County of Spartanburg.

Judge Sease found the issues made by the pleadings against the contentions of the defendant and held that the sum of Fifty Dollars per month was a fair and just allowance to plaintiff for her education, maintenance and support. [fol. 159] He ordered further that R. D. Blowers, plaintiff's maternal grandfather, be appointed trustee to receive and handle the monies ordered to be paid to plaintiff, the trustee to give bond in the sum of Two Thousand Dollars. He ordered, further, that the sums of money in the hands of the Clerk of Court and on deposit to the joint credit of the attorneys for the parties to the proceeding be paid to the trustee when he qualified, from which fund the trustee shall expend for the maintenance, support and education of the plaintiff not exceeding Fifty Dollars per month, unless a further order of the Court be obtained. He allowed plaintiff's attorneys a fee of Three Hundred Dollars to be paid by the trustee from the funds ordered to be turned over to him.

From this decree defendant appeals by ten exceptions which charge error to the trial Judge in relation to the effect of the judgment of the Georgia Court in the divorce suit between defendant and plaintiff's mother as a bar to this action, and as rendering the issues in this case res adjudicata; error in not sustaining the plea to the jurisdiction of the South Carolina Court; error in not holding that plaintiff's conduct toward him absolved him from any obligation to support her; error in holding that the $1,750.00 paid to plaintiff under the order of the Georgia Court was entirely inadequate for the support, maintenance and education of plaintiff; error in ordering the attached funds to be turned over to Blowers as trustee, instead of permitting defendant to furnish bond, to secure the monthly payments to plaintiff; error in holding that the case was heard by agreement of counsel without a jury.

Appellant's Counsel states the issues for argument to be:

I

"The judgment of the Georgia Court in the divorce suit is res adjudicata of the daughter's right to support from her father.

II

"Plaintiff's conduct towards her father, as well as her attitude at the trial, made it inequitable, under the circumstances of the case, to require him to provide for her further support."

Respondent's counsel have not contested the contention of appellant's counsel that the judgment of the Superior Court of Fulton County is binding upon the Courts of this State under Section 1, Article IV, of the Constitution of the United States. Therefore we confine our consideration of that judgment to an analysis of its provisions in order to determine whether that Court had jurisdiction of this plaintiff and whether its order determined and decided the issues made in the present case, and thus rendered them res adjudicata.

Let it be borne in mind that plaintiff, an infant, was not a party to the action between her parents for divorce, in which the judgment, relied upon by defendant, was rendered, in that she had never been served with any summons and complaint. No guardian ad litem had been appointed to represent her. Defendant relies upon Section 2981 of the Georgia Code of 1926, which was introduced in evidence, and which is in these words:

"Section 2981 (Sect. 2462). Alimony for Children on Final Trial.—If the jury, on second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid; and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified."

[fol. 160] "Sect. 2982 (Sect. 2463). Judgments, How Enforced.— . . . Such orders, decrees, or verdicts permanent or temporary, in favor of the children or family of the husband, may be enforced as those in favor of the wife exclusively."

Do the provisions of this Georgia Code give a Georgia Court jurisdiction of a resident of South Carolina, an infant, to determine her rights, in an action to which she was not a formal party? If it should be held that the Georgia Court had such jurisdiction, have the provisions of the quoted section of the Code been so complied with as to make the judgment of the Georgia Court binding upon this plaintiff and decisive of her rights? The mother of the plaintiff of this action submitted herself to the jurisdiction of the Georgia Court when she appeared and pleaded to the action brought by her husband for divorce. In her plea she demanded temporary and permanent alimony for herself and support for the minor child. She consented to the granting of her $1,750.00, and to the child's $1,750.00, which the order declares is for temporary and permanent alimony and in lieu of all other demands. The minor child, resident in another state, could not consent to such an order—even if she had had the power and the opportunity to do so. The Courts of this state are so exceedingly mindful and jealous of the rights of minors that it does not need the citation of authorities to support the assumption that such an order, made under such conditions, would not be allowed to dispose of this child's rights. Nor do we think that the doctrine of comity between states requires any such stretch of legal procedure.

But if it should be thought to be otherwise, still the order of the Georgia Court is ineffective to bar this action in this State because it does not conform to the provisions of the Code—above quoted—which specifically prescribe the method by which, in a suit for divorce, permanent alimony for the wife and permanent support for the minor children shall be fixed; viz: by the final verdict of the jury. The first verdict of the jury made no mention of alimony for the wife, nor of support for the child. The second verdict, rendered June 27, 1929, likewise was silent on the subject of alimony and support. It will be seen that the power of the Court in a divorce suit to make provision for the sup-

port of minor children derives from the finding of the jury on the second verdict of the amount which the minor children shall be entitled to for their permanent support. In this case, six months before the rendering of the second verdict in which no amount was fixed for the permanent support of the minor child (the plaintiff herein), the Court passed a consent order, in a proceeding to which plaintiff was not a party, was not represented, to which she could not consent, which undertook to decide her rights and fix a sum to be paid her.

Did the Superior Court of Fulton County have this power? We quote from the case of Pace v. Bergquist, 159 S. E. 678, because it is in striking analogy with the case under our consideration. The opinion was by the Supreme Court of Georgia.

Mrs. Ida Lois Pace (now Bergquist) filed her petition for divorce from her then husband, Harris Milton Pace; she prayed for temporary and permanent alimony. A consent order was passed directing the defendant to pay to plaintiff $30 per month for the support of their minor child. The final verdict and decree did not provide for alimony for either the child or the wife. The defendant paid the sum ordered for a while and then stopped; he was ruled for contempt and under the order of the Court resumed the payments; again he defaulted in the payments and again was attached for contempt, and again resumed the payments. June 1, 1930 he again stopped payments; the plaintiff filed her petition asking that he be attached for contempt. To this petition the defendant demurred on several grounds. We need consider only these two:

[fol. 101] "(d) It does not show that the jury awarded anything for the use of the child."

"(e) It does not show that there was a final verdict, or a final decree awarding alimony for the support of the child."

The demurrer was overruled and the case was appealed. The opinion of the Supreme Court of Georgia was filed July 18, 1931. From it we take these excerpts:

"The effect of the judgment granting temporary alimony to the mother for the child, in stated monthly payments 'until the further order of the Court'; when construed in connection with Civil Code 1910 Sec. 2978, was

that payment should continue under the supervisory power of the Court *to modify or revoke the same* (italics added) until final judgment, when the payments would cease by operation of law. Holleman v. Holleman, 69 Ga. 676: Osborne v. Osborne 146 Ga. 344; 91 S. E. 61: Black v. Black 150 Ga. 672; 104 S. E. 775."

We may here interpolate, that the consent order in the case between Yarborough and his wife was a temporary one as shown by the fact that it was modified and changed three separate times.

Continuing the quotation:

"*The fact that the judgment was rendered by consent did not extend the force and effect of the judgment beyond the final verdict and decree in the divorce case. Such judgment contemplates alimony pending the cause.* Higgs v. Higgs, 140 Ga. 20; 85 S. E. 1041." (Italics added.)

. . . . . .

"*Where the wife, on account of the misconduct of the husband, obtains an order granting her temporary alimony for the support of their minor child and awarding her custody of the child, and afterwards obtains a decree granting her a total divorce, without any provisions requiring the father to pay permanent alimony for the support of the child, the father is not relieved of his legal obligation for the support of their child.*" (Italics added.)

The judgment of the appellate Court was in these words:

"'The orders adjudging the father in contempt for failure to pay the temporary alimony awarded by the order of December 13, 1923, passed after the rendition of the final decree, did not have the effect of continuing in force the original order of December 13, 1923, for the reason that the Court was without jurisdiction of the subject-matter when the subsequent orders were passed."

The order of the lower Court overruling the demurrer and adjudging the defendant in contempt was reversed.

In the case of Gilbert v. Gilbert, 107 S. E. 492, the Supreme Court of Georgia said, after quoting Section 2981:

"Thus it will be seen that it is the duty of the jury to fix the amount of the alimony and the amount the minor chil-

dren are entitled to for their permanent support. See in this connection Gholston v. Gholston 54 Ga. 285 and Odom v. Odom 36 Ga. 286. The statutes clearly contemplate that the jury shall fix the amount of the alimony and the allowance for the support of the minor children, and we find no provision authorizing the judge to change or alter this amount."

It would seem to follow that the judge in this present case had no authority in advance of the rendering of the second verdict, to fix permanent alimony and make a permanent provision for the support of the minor child. We are [fol. 162] satisfied that the order of the Georgia Court does not conform to the requirements of the Georgia Code, and is in-effective to bind this plaintiff.

If it were conceded that the judgment is a valid one, would it be res adjudicata of the issues in the present case? What are the essential elements of the doctrine of res adjudicata? Nowhere are they more clearly and succinctly stated than by Mr. Justice Cothran in the case of Johnston-Crews Co. v. Folk, et al., 118 S. C. 478; 111 S. E. 15:

"The following have been declared to be the essential elements of res adjudicata: (1) Identity of the parties; (2) Identity of the subject matter; (3) and adjudication in the former suit of the precise question sought to be raised in the second suit."

The parties to the first suit were W. A. Yarborough and Susie B. Yarborough; the plaintiff in this action was not a party thereto. The consent order upon which the defendant now stands was never consented to by her, nor was she, being a minor, competent to consent to it. No guardian ad litem was appointed to represent her interests in the case. The subject matter of that action was the divorce of W. A. Yarborough and Susie B. Yarborough; the questions of alimony and support of the minor were incidental matters, not necessarily included in the suit. He brought the action. She answered, praying for total divorce and temporary and permanent alimony for the support of herself and the minor child (plaintiff in this action).

The verdict shows that the order upon which this defendant relies, which was a consent order, undertook to fix a lump sum for the support of the minor child as perma-

nent support, maintenance and education. But the record shows that such question was not passed on by the last verdict of the jury, and no sum fixed by it. The authorities from the Georgia Courts herein-above cited show that the order had only the effect of granting temporary alimony pending the final determination of the suit for divorce, and does not decide the question of permanent support.

This present action is between Sadie Yarborough and W. A. Yarborough; the subject matter is the support, maintenance and education of defendant's minor daughter. This precise question was not adjudicated in the former action.

It is manifest that the essential elements of res adjudicata are lacking here.

II

Appellant urges that the conduct of his daughter has been so rude, disrespectful and unkind that he ought not to be called on in the circumstances of this case, to provide further for her support, maintenance and education. He proclaims his affection for her, and his willingness to support her if she will come and live with him and his present wife in their home in Atlanta—and deport herself as a dutiful daughter should. We can find nothing in the record that shows such reprehensible conduct on the part of the daughter towards her father as would deprive her of the right to support and maintenance by him. The letter written to him by her when she was thirteen years old, and learned that he had brought action against her mother for divorce, was the natural ebullition of the resentment of a child. Her attitude when he came to see her at the school may have lacked cordiality, but it was not rude. Her stand and statement at the trial may well be explained and condoned when it is considered that within two months after the divorce from her mother, her father had married again; that she believed that her father had sought the separation in order that he might "run around with other women"; that he had abandoned her and thereby forced her to bring this action.

[fol. 163] Save for his statement at the trial there is no evidence that appellant has made any serious and sincere efforts to have his daughter live with him and his present

wife. Certain it is that the wife has not invited her step-daughter to live in the home with her and her husband.

In the case of Shaw v. Shaw 122 S. C. 390, 115 S. E. 322, this is said:

"The next assignment of error is that his Honor held that the appellant is liable for the support of his wife and children. When this Court has found that appellant has practically expelled his wife from his home, it follows that he must furnish support where they find refuge."

The daughter has not forfeited her right to support because she does not live with her father under the conditions shown by the evidence.

"A father is bound to maintain his infant children from his own estate, however ample may be their separate resources."

Trust Company v. Finley, 73 S. C. 429.

It would be an idle thing to quote authorities in support of the proposition that a father is legally bound to support his minor child.

We have seen that the provision made by the Georgia Court was only for her temporary support. It follows that the respondent in this case is entitled to maintain this action for permanent support, maintenance and education.

It does not appear that the question that defendant be allowed to give bond for his compliance with the order of Court, in the place of impounding the money which had been attached, was ever presented to the Circuit Court. The exception relating to it has not been presented in argument—and hence, is not considered. Exception 5 has been abandoned. Exception 10 was not urged. The other exceptions have been considered in the views herein expressed.

The judgment of the Court is that all exceptions are overruled, and the judgment of the Court below is affirmed.

Blease, C. J.; Stabler, and Carter, JJ., and W. C. Cothran, A. A. J., concur.

[fol. 164] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

PETITION FOR REHEARING

The petition of W. A. Yarborough respectfully shows:

1. That he is the appellant in the above entitled action which is a suit by his minor daughter against him for support. That the principal ground upon which he resisted the plaintiff's claim in the trial court and in this court was that the judgment of the Georgia court in his successful suit against plaintiff's mother for an absolute divorce was a bar to this action, for the reason that said judgment was res adjudicata of petitioner's liability to support his minor daughter, and was binding on the South Carolina courts under Article IV, Section I of the Constitution of the United States. That in an opinion filed on June 27, 1932, this court has denied the above contentions of your petitioner, and has affirmed the judgment of the court below, which held him liable for his minor daughter's support.

[fol. 165] 2. That your petitioner believes that this court has overlooked certain material considerations in the decision of the case, and he files this petition for the purpose of bringing same to the attention of the court, in order that any error that has been committed may be corrected and justice be done in the premises.

3. Your petitioner respectfully suggests that the opinion filed herein overlooks or misapprehends the law applicable to the case in the following respects:

(a) That in construing section 2981 of the Georgia Code, the Supreme Court of Georgia has consistently and repeatedly held that a consent decree fixing permanent alimony for a minor child, entered at any stage of the divorce proceedings, is as valid and binding as the verdict of a jury.

(b) That your petitioner, having complied with the terms of the Georgia decree as to permanent alimony for his minor daughter, was absolved under the Georgia law from further liability for her support, notwithstanding the fact that she was not at that time a resident of Georgia, and was not a formal party to the divorce suit, and was not

represented by a guardian ad litem, and did not and could not consent to said decree. In this connection, it is respectfully submitted that the opinion in the main case is at variance with the general law, and with the law of South Carolina as declared by this court in Trust Co. v. Finley, 73 S. C., 423.

(c) That the failure of this court to recognize the above propositions as sound and controlling amounts to a denial of petitioner's right under Article IV, Section I, of the Federal Constitution, that full faith and credit shall be given by this court to the judgment of the Georgia court in the divorce action.

Wherefore your petitioner prays for a rehearing of this appeal, and that a re-argument be ordered; that the remittitur be stayed; and for such other relief as may be appropriate.

Stephen Nettles, Attorney for W. A. Yarborough, Petitioner.

[fol. 166] IN SUPREME COURT OF SOUTH CAROLINA

[Title omitted]

OPINION No. 13436—Filed December 23, 1932

BONHAM, J.:

The earnest and strong appeal for rehearing made in this case, and certain unusual features of the case entitle the petition for rehearing to especially careful consideration.

The burden of the argument in behalf of the petition is that the opinion of this Court is in direct opposition to the decisions of the Supreme Court of Georgia, and of the Supreme Court of this State in the case of Trust Co. v. Finley, 73 S. C. 423.

It is essential to bear in mind that Sadie Yarborough, an infant, not a resident of Georgia, was never personally within the jurisdiction of the Superior Court of Fulton County, Georgia. She was never a party to the suit for divorce brought by W. A. Yarborough, her father, against his wife, Susie B. Yarborough, Sadie's mother; she was never served with any process in that case, nor was she

ever represented therein by a guardian ad litem. The decisions of the Georgia Courts upon which appellant relies are cases in which all of the parties, parents and children, were citizens of the State of Georgia for whose benefit and protection the Georgia Statutes applicable in divorce proceedings were made. Susie B. Yarborough and Sadie Yarborough were residents of South Carolina. If Susie B. Yarborough an adult, chose to submit herself to the jurisdiction of the Georgia Court, that action did not and could not of itself submit Sadie Yarborough also a resident of South Carolina, to that jurisdiction.

The Counsel for appellant in his argument on the petition for rehearing relies strongly upon the case of Trust Co. v. Finley, supra. It is true that that case does hold:

"While it is true that the judgment in the divorce proceeding absolved him from all legal obligation to maintain her (his infant daughter), nevertheless, etc."

But it is the plain inference from the record in that case that the infant child was, at the time of the granting of the divorce, with her mother in Chicago, and within the [fol. 167] jurisdiction of the Court which granted the divorce. It may not be amiss to say that in the Finley case the Supreme Court said that the father was still "under a moral obligation to render her assistance which was not lessened by those proceedings (divorce). Indeed when it was adjudged in a proceeding to which he was a party that he was no longer liable for her support, the moral obligation became greater, for the reason that he took part in depriving her of her legal rights."

Acceding to the proposition that the State, in proper circumstances, must give full faith and credit to the judgments of other States of the Union, it does not follow that such judgments may not be attacked collaterally for the purpose of showing that the foreign Court did not have jurisdiction of the person whose rights are affected by the judgment.

"A citizen of this State married a woman of New York, in that state, and forthwith brought her to this State with him, where they lived together as man and wife for a few years, when the wife left him, and took up her residence in the state of Illinois, and then, in time, obtained a divorce

from the proper Illinois Court * * *, the husband being in South Carolina, and served only by publication and not appearing in the action. *Held:* That the judgment of this Court of Illinois would not be recognized in the Courts of South Carolina, where divorces are not allowed for any cause, and that the Constitution of the United States and the Acts of Congress in pursuance thereof do not require such recognition, as the Court in Illinois never acquired jurisdiction of the person of the husband." McCreery v. Davis, 44 S. C. 195.

"Neither the constitutional provision that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, or the Acts of Congress passed in pursuance thereof, prevents an inquiry into the jurisdiction of the Court by which a judgment offered in evidence was rendered. The record of a judgment rendered in another State, may be contradicted as to the facts necessary to give the Court jurisdiction; and if it is shown that such facts did not exist the record will be a nullity, notwithstanding it may recite that they did exist." Thompson v. Whitman, 18 Wallace 457, 21 L. Ed. 897.

"This decision was afterwards followed in State of Wisconsin v. Insurance Co., 127 U. S. 265, 32 L. Ed. 239; Streitwolf v. Streitwolf, 181 U. S. 177, 45 L. Ed. 807; German S. & L. Society v. Dormitzer, 192 U. S. 125, 48 L. Ed. 343, and it is referred to with approval in Haddock v. Haddock, 201 U. S. 561, 50 L. Ed. 885; McCreery v. Davis, 44 S. C. 21, 22 S. E. 414."

"On this point the Circuit Judge charged the jury, if the defendant was a resident of the State of Georgia at the time the divorce proceedings were carried through the Georgia Court, then the decree of divorce must be recognized in this State as a complete protection to him against the charge of adultery; but if he went to Georgia for a mere temporary purpose, with no intention to become a resident then the Georgia Court was without jurisdiction and its decree would be a nullity, etc., etc." State v. Westmoreland, 76 S. C. 145-8.

In the matter of the Succession of Benton, 106 La. 494, 59 L. R. A. 185, it is held: That a divorce granted by a Court of competent jurisdiction of another State which

did not on its face disclose any intrinsic nullity, was "subject to attack only upon proof of extrinsic facts *undermining the jurisdiction.*" Citing Smith v. Smith, 43 La. Ann. 1140, 10 So. 248.

It is manifest that the judgment of a foreign court is not binding in this State under the full faith and credit clause of the Constitution and Acts of Congress, where the court of the foreign State had not acquired jurisdiction of the person whose rights are sought to be affected by the judgment. It is certain that the Superior Court of Fulton [fol. 168] County of the State of Georgia, while acquiring jurisdiction of W. A. Yarborough and Susie B. Yarborough, never acquired jurisdiction of the person of the infant, Sadie Yarborough, in the suit for divorce between the parents. As to her that judgment is a nullity, and does not render the issues in this present action between her and her father in the Court of Common Pleas for Spartanburg County, in the State of South Carolina, res adjudicata.

It seems to us an untenable proposition that the rights of infants, residents in one State, may be disposed of by a suit between the parents in another State, to which suit the infants are not parties, were not represented by guardian ad litem, were never served in any way with process, and were never found within the jurisdiction of the foreign Court; and that, the judgment of the foreign Court in the case between the parents precludes the infant from bringing an action against one or the other of the parents in the Courts of the State of the infant's residence, because the issues are rendered res adjudicata by the judgment of the foreign court in the suit between the parents.

We cannot accede to such a doctrine.

The Petition for Rehearing is denied, and the order staying the remittitur is revoked.

Blease, C. J.; Stabler and Carter, J. J., concur. W. C. Cothran, A. A. J., dissents.

IN SUPREME COURT OF SOUTH CAROLINA

DISSENTING OPINION

W. C. COTHRAN, A. A. J. (dissenting):

A more careful study of this case convinces me that the petition for a rehearing should be granted. I do not wish

to delay longer the final disposition of the case and regret that I have not had an opportunity to elaborate my reasons.

[fol. 169] Clerk's certificate to stay papers omitted in printing.

[fol. 170] IN COURT OF COMMON PLEAS OF SPARTANBURG COUNTY

[Title omitted]

PETITION FOR STAY

To His Honor Thomas S. Sease, Circuit Judge:

The petition of the defendant, Wm. A. Yarborough, respectfully shows:

1. That final judgment of the Supreme Court of South Carolina in the above entitled cause was rendered against your petitioner on December 23rd, 1932, by an opinion refusing a petition for rehearing filed in the cause and affirming the judgment of the trial Court. Through an inadvertence in the office of the Clerk of the Supreme Court the remittitur affirming the judgment of the Court below was sent down immediately upon the filing of the judgment in the Supreme Court, without affording opportunity to your petitioner to apply to the Supreme Court for a stay of remittitur, and your petitioner therefore now makes his application for a stay to this Court.

2. That the said final judgment of the Supreme Court is subject to review by the Supreme Court of the United States on writ of certiorari upon grounds that the said final judgment denies to your petitioner rights, privileges and immunities granted to your petitioner under the Constitution and laws of the United States.

[fol. 171] 3. That your petitioner, being the party aggrieved by the aforesaid judgment of the Supreme Court of South Carolina, desires to apply for a writ of certiorari from the Supreme Court of the United States, and in order to make such application and obtain such writ it is neces-

sary that the execution and enforcement of such judgment be stayed for a reasonable time.

4. That upon the institution of this action the plaintiff caused to be attached certain indebtedness of third parties to the defendant, which indebtedness was thereafter liquidated by litigation, and as a result thereof the sum of $245.55 came into the possession of the Clerk of this Court to be held by him subject to the final judgment in this cause, and the sum of $1,875.00 was deposited in Central National Bank of Spartanburg to the joint order of the attorneys for plaintiff and the attorney for defendant subject to the final judgment in this cause. That the judgment of this Court in this cause in effect ordered both of said sums turned over to a trustee for the use and benefit of the plaintiff, and no additional judgment was rendered against the defendant, and the judgment of the Supreme Court was an affirmance of the judgment below; by reason of which the funds to answer the final judgment in this cause are in the custody of the Court.

5. That your petitioner stands ready to give such security for the protection of the plaintiff in the above entitled cause as may be necessary and proper.

Wherefore your petitioner prays that the execution and enforcement of such judgment rendered, as aforesaid, on December 23rd, 1932, be stayed pursuant to the Acts of Congress in such case made and provided, and that your petitioner be allotted a period of ninety (90) days from date of said judgment to apply for a writ of certiorari from the Supreme Court of the United States.

R. E. Whiting, Stephen Nettles, Attorneys for Petitioner.

December 28, 1932.

[fol. 172] IN COURT OF COMMON PLEAS

[Title omitted]

ORDER STAYING EXECUTION OF JUDGMENT

The defendant, Wm. A. Yarborough, having made application for stay of execution and enforcement of judgment

in the above entitled cause for a reasonable time in order to enable him to apply for and obtain a writ of certiorari from the Supreme Court of the United States in order to review the judgment rendered against him in said cause by the Supreme Court of South Carolina, of date December 23rd, 1932, it is

Ordered that the defendant have ninety (90) days from the date of said judgment within which to apply for a writ of certiorari from the Supreme Court of the United States; and that the execution and enforcement of said judgment herein be stayed until final disposition of the petition for writ of certiorari and until further order of this Court, provided that said defendant shall file a bond with good and sufficient surety, to be approved by the Clerk, in the penal sum of two hundred, fifty dollars, within twenty (20) days from the date hereof, conditioned to indemnify the plaintiff against all damages and costs that may be sustained by reason of the stay, if the plaintiff fail to make application for such writ within the period allotted therefor, or fail to obtain an order granting said application, or fail to make good his pleas in the Supreme Court of the United States.

[fol. 173] Further ordered that the original petition and this order be filed forthwith in the office of the Clerk of this Court; that a copy thereof be served without delay on the plaintiff or one of plaintiff's attorneys of record; and that a certified copy of the petition, this order and the bond when filed in the office of the Clerk of the Supreme Court of South Carolina.

T. S. Sease, Resident Judge, 7th Judicial Circuit.

Chambers, Spartanburg, S. C., December 28, 1932.

[fol. 174] In Court of Common Pleas of Spartanburg County

[Title omitted]

Order Increasing Amount of Stay Bond

This matter is before me on duly noticed motion by the plaintiff's attorneys to modify the order heretofore passed

by increasing the stay bond. The original order provided for a bond of Two Hundred and Fifty Dollars.

After hearing argument I am of the opinion that a bond in the penal sum of Three Hundred Dollars will be adequate, and it is, therefore,

Ordered that the amount of the stay bond in this case be increased to Three Hundred ($300) Dollars, conditioned to indemnify the plaintiff against all damages, interest and costs that may be sustained by reason of the stay if the plaintiff fail to make application for the writ of certiorari within the time allotted therefor, or fail to make application, or fail to make good his plea to the Supreme Court of the United States, such bond to be approved by the Clerk of this Court.

It is further ordered that the defendant have ten days from the filing of this order within which to file the bond herein provided for with the Clerk of this court, and that this order be filed with the Clerk of this court forthwith.

T. S. Sease, Judge Seventh Circuit, at Chambers.

January 18th, 1933.

[fols. 175 & 176] Bond on stay for $300.00, approved January 27, 1933, omitted in printing.

[fol. 177] In Supreme Court of South Carolina

[Title omitted]

Præcipe for Transcript of Record

To the Clerk of the above-entitled court:

You are hereby requested to make a transcript of the record of this cause to be used in an application to the Supreme Court of the United States for a Writ of Certiorari in said cause, the transcript to consist of:

The record on appeal in said cause;

The opinion of the Supreme Court of the State of South Carolina;

The petition for a rehearing;

The opinion of the Supreme Court of the State of South Carolina denying the petition for a rehearing;

Supersedeas order;

Cost and supersedeas bond;

Your certificate to the record that it is a complete record in said cause.

Dated this 13th day of March, 1933.

R. E. Whiting, Stephen Nettles, Attorneys for Appellant.

[fol. 178] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 179] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 8, 1933

The petition herein for a writ of certiorari to the Supreme Court of the State of South Carolina is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 37,499. South Carolina Supreme Court. Term No. 14. W. A. Yarborough, petitioner, vs. Sadie Yarborough, by her guardian ad litem, R. D. Blowers. Petition for a writ of certiorari and exhibit thereto. Filed March 23, 1933. No. 14, O. T., 1933.

FILED

Supreme Court of the United States

OCTOBER TERM, 1932

No. [redacted] 14

W. A. YARBOROUGH, Petitioner,

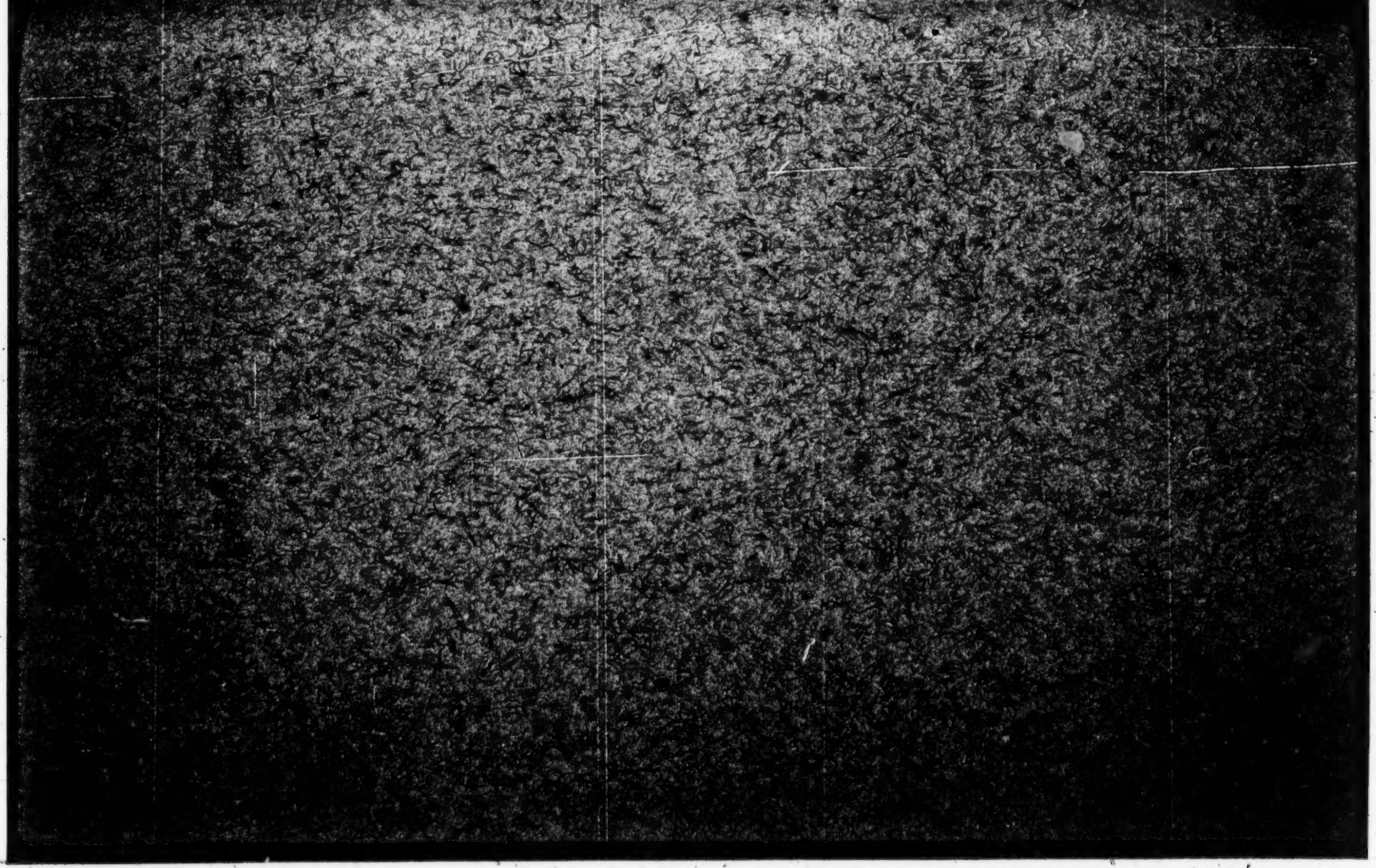
vs.

SADIE YARBOROUGH, by Her Guardian ad Litem, D. D. Blowers, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA AND BRIEF IN SUPPORT THEREOF

[redacted]

Solicitor for Petitioner.



Supreme Court of the United States

OCTOBER TERM, 1932

No.——

W. A. YARBOROUGH, PETITIONER,

versus

SADIE YARBOROUGH, BY HER GUARDIAN AD LITEM, R. D. BLOWERS, RESPONDENT

PETITION FOR WRIT OF CERTIORARI

R. E. WHITING,
STEPHEN NETTLES,
Counsel for Petitioner.

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May it Please the Court:

The petition of W. A. Yarborough respectfully shows to this Honorable Court:

A

SUMMARY STATEMENT OF THE MATTER INVOLVED

This action,—brought in the Court of Common Pleas for Spartanburg County, State of South Carolina,—involves the applicability of Article IV, Section 1, of the Constitution of the United States, which requires that "full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state".

The defendant, W. A. Yarborough, is a non-resident of South Carolina, domiciled in Georgia, where he obtained a final decree of divorce, of date June 7, 1929, in a proceeding brought in the Superior Court of Fulton County, Georgia. By decree made in the proceedings, of date January 19, 1929,—following the first jury verdict of divorce obtained on January 17, 1929,—Superior Court Judge Pomeroy, Atlanta Circuit, ordered and adjudged the payment by said W. A. Yarborough, of a specified amount, "in full settlement of temporary *and permanent* alimony in said cause." The decree required the transfer of a certain mortgage owned by defendant—to the extent of $1750.00—"to R. D. Blowers, of Spartanburg, South Carolina, as trustee for Sadie Yarborough, minor daughter of plaintiff and defendant," to be "expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure". It was made a further provision of the decree that "upon the compliance of this order by the plaintiff (W. A. Yarborough), he shall be relieved of all *payments of alimony* and counsel fees, in said case, except that the payment due under the prior order of court, of the

sum of $50.00, for the month of January, 1929 shall be by him paid, in addition to the other amounts hereinabove named".

(See "Appendix A", annexed to this petition, for abstract of the Georgia Court proceedings; and "Appendix B", annexed to this petition, for pertinent provisions of Georgia statutes).

On August 20, 1929, Sadie Yarborough, the minor daughter of the divorced parents,—at that time about sixteen years old,—brought the present action, as a proceeding in equity, to compel the defendant, W. A. Yarborough (the petitioner herein), to pay a monthly allowance for supporting her at the home of her maternal grandfather at Spartanburg, South Carolina (where she was living with her divorced mother). Jurisdiction of the defendant was obtained by attachment; and funds belonging to him amounting to $2119.55 were attached in the action. Defendant, answering the complaint, made a general appearance; setting up the defense, as a bar to plaintiff's right of action, that under the judgment of the Georgia Court in the divorce proceedings brought in the Superior Court of Fulton County, Georgia, he had been required to pay $1750.00 to R. D. Blowers as trustee, for the permanent support of his daughter, which payment he had made, and that such payment operated in full and final discharge of his obligation to support his daughter, and that the decree in the Georgia Court was *res adjudicata* on the matter of support and binding on the South Carolina Court.

The case was heard in the Circuit Court (the Court of Common Pleas for Spartanburg County) on testimony taken before a Referee; and, on August 22, 1931, Judge Sease, Circuit Judge, filed a decree, holding that the judgment in the Georgia divorce action should not be construed, or considered, as determining the extent of the father's liability for the support of the child. (R., folios 588-590). The decree allowed plaintiff $50.00 per month and turned over the funds belonging to the defendant (attached in the action) to a trustee, to be used in making the monthly payments. (R., folio 597).

An appeal taken by the defendant (the petitioner herein) to the South Carolina Supreme Court raised the issue: "The judgment of the Georgia Court in the divorce suit is *res adjudicata* of the daughter's right to support from her father."

The pertinent exceptions (or assignments of error) were:

"2. Error in not holding that the judgment of the Georgia court in the divorce suit absolved the defendant from further liability for the support of his minor daughter, the plaintiff herein, he having made the provision for her support required by said judgment.

"3. Error in not holding that the judgment of the Georgia court in the divorce suit was a bar to this action, being res adjudicata of this defendant's liability to support his minor daughter, and said judgment being binding on the South Carolina courts under Article IV, Section 1, of the Constitution of the United States of America.

"8. Error in holding that the $1750.00 provided by the judgment of the Georgia court for the support of defendant's daughter 'is entirely inadequate to support, educate, and maintain her in her station in life, and it necessarily follows, therefore, that the father is bound both morally and legally to see that she is properly provided for.' It is respectfully submitted that the judgment of the Georgia court provided $1750.00 for the permanent support of the daughter; that said judgment was res adjudicata of the matter of support; and that the court below was bound to accord that judgment the full faith and credit required by Article IV, Section 1, of the Constitution of the United States of America."

(R., folios 605-606 and 610-611).

The Supreme Court of South Carolina, on June 27, 1932, filed its decision against defendant, affirming the decree of the Circuit Court on the ground (1) that the Georgia Court did not have jurisdiction of the minor daughter, to determine her rights, as she was not a party to the action; and (2) that the

order containing the provision for the support of the minor daughter was a consent order, and did not conform to the provisions of the Georgia Code in respect to the matter of determining the liability for the support of the minor children.

A petition for rehearing was filed by defendant (the petitioner herein).

The South Carolina Supreme Court, on December 27, 1932, filed an order denying the petition for rehearing on the ground (1) that the child, Sadie Yarborough, " was never personally within the jurisdiction of the Superior Court of Fulton County, Georgia, was never served with any process in that case, nor was she ever represented therein by guardian *ad litem;*" (from opinion, 168 S. C., at page 59); and (2) "that the Superior Court of Fulton County, Georgia, while acquiring jurisdiction of W. A. Yarborough and Susie Yarborough, never acquired jurisdiction of the person of the infant, Sadie Yarborough, in a suit for divorce between the parents." The Court further said:

> "As to her that judgment is a nullity, and does not render the issues in the present case between her and her father, in the Court of Common Pleas for Spartanburg County, in the State of South Carolina, res adjudicata." (From opinion 168 S. C., at page 62.)

B

Reasons Relied on for the Allowance of the Writ

1. The State Court has decided a federal question of substance not heretofore determined by this Court. The federal question involved in the State Court decision was the applicability of the full faith and credit clause of the United States Constitution to a decree of the court of another state adjudging, in a divorce proceeding, the payment of a specified sum in lieu of permanent alimony for the support of the child. Was such decree binding and effective as an adjudication of the rights of the minor child so as to bar subsequent independent action—in her personal behalf—to compel the father to make

an allowance for her support? There is no Federal Supreme Court decision directly determinative of the effect of divorce court proceedings as an adjudication of the extent of the father's duty toward a child awarded to the custody of the mother.

2. The State Court has decided a federal question of substance, in a way probably not in accord with applicable decisions of this court. The cases of *Sistare v. Sistare* 218 U. S. 1, *Bates v. Bodie* 245 U. S. 520, and *American Surety Company v. Baldwin* (decision of November 14, 1932—United States Supreme Court advance opinions (77 L. ed.), at page 125,—while not conclusively in point,—are thought to be applicable to control the determination of the federal question involved, and to compel a different ruling from that declared in the State Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the South Carolina Supreme Court, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket, No. 290, *Sadie Yarborough by her guardian ad litem, R. D. Blowers, Respondent, v. W. A. Yarborough, Appellant,* and that the said judgment of the South Carolina Supreme Court may be reversed by this Honorable Court, and that your petition may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Dated March 20, 1933.

W. A. YARBOROUGH,
By: R. E. WHITING

STEPHEN NETTLES,
Counsel for Petitioner.

APPENDIX A.

Record of Georgia Divorce Proceedings

On September 21, 1927, W. A. Yarborough filed suit for total divorce against Susie B. Yarborough in the Superior Court of Fulton County, Georgia. The verified complaint alleged that the plaintiff was, and had been for more than twelve months last past, a bona fide resident of Georgia; that defendant was a resident of Hendersonville, N. C.; that the parties were married in 1904; that they had separated in February, 1927; that they had one child, Sadie, aged 12; and that the divorce was sought on the ground of mental and physical cruelty and threats by defendant against plaintiff that made him fear for his life, health, and well-being.

The defendant wife was served by publication, and on November 25, 1927, she appeared by counsel and filed an answer and cross-bill, the same being verified by her affidavit. By her answer, she admitted the formal and denied the substantial allegations of plaintiff's bill. By her cross-bill defendant alleged that she had been a true and affectionate wife, but that plaintiff had been guilty of various acts of physical and mental cruelty toward her, and that he was guilty of adultery. Her prayer was for a total divorce; the custody of the child; an injunction against plaintiff's disposing of his property pending the litigation; "that provision for permanent alimony be made for the support of respondent and the minor child above mentioned and for the education of said minor child;" and "that petitioner be required to pay into court a reasonable sum to defray the expenses of this action and for counsel fees, and that he be required to pay to petitioner such further sums for temporary alimony for the support of herself and her minor child, during the pendency of these proceedings, as may seem just to the court."

On November 26, 1927, the day after the wife's answer and cross-bill were filed, an order was made requiring the husband to show cause on December 3, 1927, "why the prayer of said

answer and cross-bill for temporary alimony and counsel fees should not be granted." On January 12, 1928, a consent order was entered, requiring the plaintiff to "pay to the defendant, Susie B. Yarborough, by the 10th day of each month the sum of $125.00 per month as temporary alimony for her support, and $75.00 per month for the support of the minor child, Sadie Yarborough, until the further order of the court or the final disposition of this case." Plaintiff was also ordered to pay defendant's attorneys $100.00 "on account of attorney's fees."

On February 29, 1928, the plaintiff filed a petition for reduction of temporary alimony. The petition referred to the consent order of January 12, 1928, "for the payment of temporary alimony and counsel fees in the above stated case, whereby petitioner was to pay $125.00 per month for the support and maintenance of the said Mrs. Susie B. Yarborough, and $75.00 per month for the support, maintenance and education of their minor daughter, Sadie Yarborough," and set out certain grounds on which he asked the court for "a reduction in said alimony to the sum of $100.00 per month," and that the total fee of defendant's attorneys be fixed at $100.00. This petition also stated that Mrs. Yarborough was refusing to let him see his daughter except in her presence, and he asked to be allowed to visit his daughter, and to have her with him at specified times apart from her mother. A rule to show cause issued, and a hearing was had before the court on April 17, 1928, on the portion of the petition praying for the privilege of seeing his daughter, and on the same day the following order was passed:

> "It is therefore, considered, ordered and adjudged that the plaintiff be and he is hereby allowed the privilege of visiting his said minor daughter, and of having her with him, out of the presence of the defendant, on the second and fourth week-ends of each month, from the close of school hours Friday until Sunday night of said week ends, during school terms, and at like times during vacation; at which times the plaintiff shall be entitled to take said minor daughter on pleasure trips of reasonable dis-

tance returning her punctually at the conclusion of the alloted time."

On June 8, 1928, the defendant filed an answer to so much of the plaintiff's petition as sought a reduction in alimony and counsel fee, in which she alleged that plaintiff had not paid the $100.00 attorney's fee theretofore ordered by the Court, and that plaintiff "is in default in the payment of alimony in accordance with the previous order of this court in the sum of $100.00 for the month of March, $100.00 for the month of April, $100.00 for the month of May, and $200.00 for the month of June." She asked that the petition be denied, that she have judgment for the above sums, and that the plaintiff be adjudged in contempt.

On June 9, 1928, the following order, omitting caption, was made:

"The foregoing matter coming on to be heard upon the plaintiff's petition for reduction of alimony, and limitation of attorney's fees, and after the introduction of evidence by plaintiff and defendant thereon, and after hearing from counsel for both plaintiff and defendant.

"It is considered, ordered and adjudged that the order of this Court dated January 12th, awarding alimony and attorney's fees to the defendant, Mrs. Susie B. Yarborough, be and the same is hereby revoked, and in lieu thereof, it is considered, ordered and adjudged that from and after the passage of this order the plaintiff, W. A. Yarborough, pay to the defendant, Mrs. Susie B. Yarborough, for the support and maintenance of herself and the minor daughter, Sadie Yarborough, the total sum of One Hundred Dollars ($100.00) per month, to continue until the further order of the Court in the premises, the first payment hereunder to be made for the current month of June, 1928, and that the plaintiff pay to defendant's attorneys, Messrs. Jones, Evins, Moore and Powers and Ralph Williams, a total fee of One Hundred Dollars ($100.00) against which shall be credited all sums heretofore paid during the pendency of said case, to said attor-

neys, which shall be in full of the plaintiff's obligation to pay defendant's counsel in said litigation, said fee to be paid on or before October 1st, 1928.

"It is further ordered that all unpaid alimony which has accrued heretofore under the Court's order of January 12th, 1928, be, and the same is hereby cancelled and the plaintiff is relieved from the obligation to pay the same. Ordered further, that in the event of the failure of the defendant to comply with the Court's order dated the.... day of April, 1928, allowing the plaintiff the privilege of visiting his said minor daughter, Sadie Yarborough, at times and places specified in said order, that the plaintiff shall have the right upon due proof of the facts, and after hearing thereon, to an order relieving him of all obligation to pay alimony under this order.

"This 9th day of June, 1928.

(Signed) "JOHN D. HUMPHRIES,
Judge Superior Court,
Atlanta Circuit."

On October 24, 1928, plaintiff filed another petition in which he referred to the order of June 9, 1928, in which the court passed upon "petitioner's application to reduce the monthly payments of alimony," and also referred to the last paragraph of said order, regarding plaintiff's right to be relieved from the payment of any alimony to his wife, if she did not permit him to see his daughter, as provided in the previous order of the court. The petition then went on to recite that defendant had prevented petitioner from seeing his daughter in accordance with the order of the court; that she had attempted to extort money from him by threatening to prosecute him criminally on a false charge, and failing to obtain the money, she had, on July 17, 1928, sworn out a warrant against him in Spartanburg, S. C., charging him with having fraudulently obtained her signature to an assignment to the insurance company of an insurance policy in which she was the beneficiary by representing to her that he was in dire need of funds when

he was not, and that he had cashed the check obtained from the insurance company, which was payable to their joint order, and converted the proceeds to his own use; that the truth was that the money was realized by surrendering a policy of insurance on his life, as he could not carry it longer, and that he paid over the money to his wife in cash or used it in paying extravagant bills she had created without his knowledge or consent; that she had caused his arrest on the warrant and his confinement in jail in Atlanta until he waived extradition and went to Spartanburg and made bond; that, while he had managed to pay the alimony provided by the order of June 9, 1928, the expense his wife had subjected him to in connection with the warrant had exhausted his funds and made it impossible for him further to keep up the alimony payments; and that his wife had in her possession an automobile of his, and he desired it sold and the proceeds paid to his wife on account of future alimony payments. The prayer of the petition was for the reduction of "said alimony payments until petitioner has had an opportunity to meet the other expenses forced upon him by the defendant"; that the automobile be sold, and "that the court order all further payments of alimony, in so far as they are for the support of the defendant, indefinitely withheld until sufficient guarantees are made that petitioner will be allowed to enjoy regular visits with his said minor daughter without the presence of the defendant."

On December 7, 1928, the following order, omitting caption, was filed:

> "The petition of plaintiff for a reduction of alimony payments, for the sale of an automobile, and for changes in the order permitting plaintiff to visit his minor daughter, which said petition was filed October 24th, 1928, coming on for a hearing, upon hearing evidence and argument on behalf of both plaintiff and the defendant, it is considered, ordered, adjudged and decreed as follows:
>
> "The court declines to interfere with the possession and ownership by defendant of the automobile referred to in said petition. The court declines to make any change in

order permitting plaintiff to see his minor daughter, and finds that defendant has partly complied with said order of court. It is ordered that the amount of alimony due by plaintiff to defendant be reduced for the months of December, 1928, January, February, and March, 1929, to the sum of Fifty Dollars ($50.00) per month for these four months, but that beginning with the month of April, 1929, said reduction shall cease and said payments shall be One Hundred Dollars ($100.00) per month as before the passage of this order.

"The defendant having testified and the plaintiff, W. A. Yarborough, having also testified that the plaintiff has loaned out the sum of Five Thousand Dollars ($5,000.00) secured by first loans on real estate in Spartanburg, S. C., which loans draw interest at the rate of 7% per annum, it is further considered, ordered and decreed that the plaintiff, W. A. Yarborough, be and he is hereby enjoined from disposing of, or encumbering, or in any other manner changing the status of Four Thousand Dollars ($4,000.00) worth of said first loans until the further order of this court, but that Four Thousand Dollars ($4,000.00) worth of said loans be held without change subject to such decrees and judgments as have been rendered or may hereafter be rendered in favor of the defendant for alimony.

"This December 7th, 1928.

(Signed) "E. D. THOMAS,
Judge Superior Court,
Atlanta Circuit."

On January 17, 1929, the case was tried to a jury and they rendered the first total divorce verdict, as follows:

"We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce; that is to say, a divorce a *vinculo matrimonii*, upon legal principles between the parties in this case. This 17th day of January, 1929.

(Signed) "H. M. DODD, Foreman.

On January 19, 1929, the following consent order omitting caption, was made:

"Parties, plaintiff and defendant, having personally, in writing, consented hereto, and their respective counsel of record having likewise consented in writing hereto,

"It is considered, ordered and adjudged that the following settlement be hereby made the order of the Court, the same being in full settlement of temporary and permanent alimony in said case, and in full settlement of all other demands of every nature whatsoever between the parties:

"The plaintiff, W. A. Yarborough, being the owner of two certain real estate mortgages, each of the principal sum of Two Thousand Dollars ($2,000.00), and bearing interest from their respective dates at seven per cent (7%) per annum, executed by McDowell and by Hammond, said mortgages being first liens upon real estate in the city of Spartanburg, South Carolina, and not having been heretofore transferred, sold or encumbered by the plaintiff, the plaintiff having heretofore been restrained by the order of this Court from disposing of the same,

"It is considered, ordered and adjudged that said mortgages be, and they are hereby transferred, sold and assigned by the plaintiff, W. A. Yarborough, to the defendant, Mrs. Susie B. Yarborough to the extent of One Thousand, Seven Hundred, Fifty Dollars ($1,750.00), and the plaintiff, W. A. Yarborough, does hereby transfer, sell and assign said mortgages to R. D. Blowers, of Spartanburg, South Carolina, as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, to the extent of One Thousand, Seven Hundred Fifty Dollars ($1,750.00), the said Mrs. Susie B. Yarborough and the said R. D. Blowers as Trustee as aforesaid, shall have the right, at their option, to pay to the plaintiff, W. A. Yarborough, a sum equal to Two Hundred Fifty Dollars ($250.00) and accrued interest upon each of said mortgages, having an absolute transfer to each of them as

aforesaid, on the other hand, or to require that said mortgages be sold and the said Mrs. Susie B. Yarborough and the said R. D. Blowers, as Trustee, each to receive the sum hereinbefore stated and the plaintiff, W. A. Yarborough, to receive the balance of the proceeds of said sale. The amount to be thus received by R. D. Blowers, as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure.

"Upon the compliance with this order by the plaintiff, he shall be relieved of all payments of alimony and counsel fees, in said case, except that the payment due under the prior order of Court of the sum of Fifty Dollars ($50.00) for the month of January, 1929, shall be by him paid, in addition to the other amounts hereinbefore named. The plaintiff, W. A. Yarborough, shall comply with the terms of this consent order at the earliest possible date, and at all events not later than January 27, 1929.

"The provisions of the order of the Court heretofore entered fixing the times and places when plaintiff, W. A. Yarborough, shall have the right to visit and have with him, out of the presence of the defendant, the said Sadie Yarborough, minor daughter of plaintiff and defendant, are hereby continued in force.

"This 19th day of January, 1929.

(Signed) "EDGAR E. POMEROY,
Judge Superior Court,
Atlanta Circuit."

"We, plaintiff and defendant respectively, hereby consent to the above and foregoing order.

"This 17th day of January, 1929.

(Signed) "W. A. YARBOROUGH,
Plaintiff.

(Signed) "HAL LINDSAY,
Plaintiff's Attorney.

(Signed) "SUSIE B. YARBOROUGH,
Defendant.

(Signed) "WRIGHT & DAVIS
by JAS. C. DAVIS,
Defendant's Attorneys."

On June 7, 1929, as provided by law, the case was again tried to a jury, and they rendered the second total divorce verdict, as follows:

"We, the jury, find that sufficient proofs have been submitted to our consideration to authorize a total divorce; that is to say, a divorce a *vinculo matrimonii*, upon legal principles between the parties in this case. We fix the rights and disabilities of the parties as follows: The plaintiff shall be at liberty to marry again. This 7th day of June, 1929.

(Signed) "FRED A. CADIEU, *Foreman.*"

On the same day, June 7, 1929, the following decree of Court in total divorce was entered:

"Two concurring verdicts favoring a total divorce to plaintiff having been rendered in the within case, it is considered, ordered and adjudged that said marriage be, and the same is hereby annulled and a total divorce granted between the parties, with liberty to the plaintiff to marry again. The defendant shall be at liberty to marry again. Jurisdiction of said case is retained for the purpose of further enforcement of orders of this Court heretofore

passed. Ordered further that the defendant pay the costs of these proceedings.

This 7th day of June, 1929.

(Signed) "EDGAR E. POMEROY,
Judge Superior Court,
Atlanta Circuit.

APPENDIX B.

Pertinent Provisions of Georgia Statutes and Decisions of the Georgia Court Construing Such Provisions.

At the trial before Judge Sease the defendant offered in evidence the following sections of the Georgia Code of 1926 annotated, and decisions of the Georgia Courts:

Sect. 2981 (Sect. 2462) ALIMONY FOR CHILDREN ON FINAL TRIAL.—If the jury, on the second or final verdict, find favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid; and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified."

"Sect. 2982. (Sect. 2463) JUDGMENTS, HOW ENFORCED.—Such orders, decrees, or verdicts permanent or temporary, in favor of the children or family of the husband, may be enforced as those in favor of the wife exclusively."

Maddox v. Patterson, 6, S. E. 581.
Coffee v. Coffee, 28 S. E. 977.
Brown v. Brown, 64 S. E. 1092.
Wilkins v. Wilkins 91, S. E. 415.

Gilbert v. Gilbert, 107 S. E. 490.
Johnson v. Johnson, 62, S. E. 1044.

APPENDIX C.

Pertinent Provisions of South Carolina Statutes.

Statutory provisions are contained in South Carolina Code of 1932,—relative to the parental obligation to provide adequate support for minor children and to the reciprocal parental right of control,—as follows:

"Sect. 255. (19): Neglect of Child a Misdemeanor. * * * Abandonment (etc.),—* * * If any person shall willfully abandon his family without providing adequate support for his wife, and the children which he may have begotten upon her, he shall be guilty of a misdemeanor.

"If the fact of abandonment or any failure to provide adequate support for the wife and children shall be proved, or while living with such wife, neglect by the husband to provide for the adequate support of such wife or children shall be proved, then the fact that such husband neglects applying himself to some honest calling for the support of such wife or children and is found sauntering about endeavoring to maintain himself by gaming or other undue means or is a common frequenter of drinking houses, or is a known common drunkard, shall be presumptive evidence that such abandonment is willful.

"Upon any conviction for abandonment, any judge having jurisdiction thereof may, in his discretion, make such order as in his judgment shall best provide for the support as far as may be necessary, of the deserted wife or children, or both, from the property or labor of the defendant.

"If any husband while living with his wife shall willfully neglect to provide adequate support for such wife or children which he has begotten upon her, he shall be guilty of misdemeanor."

"Sect. 1123: Misdemeanor for Husband to Fail to Support Wife and Children.—Any able-bodied man or a man capable of earning or making a livelihood who shall, without just cause or excuse, abandon or fail to supply the actual necessaries of life to his wife or to his minor, unmarried child or children dependent upon him, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be imprisoned for a term of not exceeding one year, or be liable to a fine of not less than three hundred dollars nor more than fifteen hundred dollars, or both, in the discretion of the court; * * *

"Sect. 8638: Mother and Father to Have Equal Rights in Custody, Etc., of Minor Children.—The wife and husband are the joint natural guardians of their minor children and are equally charged with their welfare and education, and the care and management of their estates; and the wife and husband shall have equal power, rights and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of such minor or any other matter effecting the minor. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to its custody. The welfare of the minor shall be the first consideration and the court having jurisdiction shall determine all questions concerning the guardianship of the minor. Nothing herein contained shall be construed to relieve the father of his common law obligation to support his children, nor shall it be construed to increase the liability of the mother to support the children."

"Sect. 8668: Employers of Minors Liable to Parents or Guardians.—If any person shall hire or employ any minor, or person under the age of twenty-one year, without the knowledge and consent of the parents or guardian of such minor, such person shall pay to said parents or guardian the full value of the labor of said minor from and after notice from the parents or guardian that payment of such

service shall be made to him or them, as the case may be: *Provided*, This section shall not apply to cases where the parents or guardian fails or refuses to furnish the minor a home and support, in which cases the minor shall have the right to make contract in regard to his own labor and enforce same in his own name and for his own benefit, and the employer shall be responsible to the minor only in such cases."

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinion of the Court Below

The opinion in the South Carolina Supreme Court is officialy reported in 168 S. C. 46 (Advance Sheets, S. C. Reports), and is also reported in 166 S. E. 877.

A petition for rehearing was filed; and this was refused in an opinion officially reported in 168 S. C. at page 59 (Advance Sheets, S. C. Reports).

II

Jurisdiction

1. The statutory provision believed to sustain the jurisdiction is Section 237, amended, of the Judicial Code (28 U. S. C. A., 344 (b)) as follows:

> "It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution," etc.

2. The decision sought to be reviewed was first filed on June 27, 1932. A petition for rehearing being, however, presented to the South Carolina Supreme Court, the order denying the petition, and constituting a final adjudication of the cause, was filed of date, December 23, 1932.

3. The answer filed by defendant (R., folios 15-20) invokes the protection of the full faith and credit clause of the Federal Constitution. The appeal from the lower court to the Supreme Court of South Carolina raised the issue: "The judgment of the Georgia Court in the divorce suit is *res adjudicata* of the daughter's right to support from her father." (From opinion, 168 S. C., at page 51). The holding of the opinion was that the question of the extent of the father's liability for the support of the child was not adjudicated in the Georgia action (168 S. C. 46, 57).

4. The following cases are believed to sustain the jurisdiction:

American Surety Company v. Baldwin (decision of Nov. 14, 1932);
Bates v. Bodie, 245 U. S. 520;
Sistare v. Sistare, 218 U. S. 1;
Haddock v. Haddock, 201 U. S. 562.

III

Statement of the Case

Supplementary facts to those set out in the "Summary Statement of the Matter Involved", as made in the petition herein,—pertinent to show the situation of the respondent as a child of divorced parents, for whom provision was made by the decree of the Georgia court in the divorce action,—are as follows:

The defendant, W. A. Yarborough, and his family, consisting of Susie B. Yarborough, his wife, and Sadie Yarborough, his daughter, were living together in Atlanta, Georgia, at a home provided by said defendant, for about a year prior to the commencement of the divorce proceedings.

The family went to Atlanta about September 5th or 6th, 1926 (R., folio 242). The daughter attended public school in Atlanta for the school year 1926-27; and after school ended, in June, 1927, the wife went to Hendersonville, North Carolina (R., folio 243); the daughter first going to Camp Fire Girls Camp, at Toccoa, Georgia, and later, in the summer, to Hendersonville, North Carolina. (R., folios 244, 245)

Yarborough filed divorce proceedings by publication on September 21, 1927, in the Superior Court of Fulton County, Georgia. The wife was served by publication; but, on November 25, 1927, she appeared by counsel and filed an answer and cross-bill. In the cross-bill Mrs. Yarborough asked for a total divorce, the custody of the child, temporary alimony for the support of herself and the child during the pendency of the action, and "that provision *for permanent alimony* be made for the support of respondent, and the education of said minor child." (R., folio 503; or, see "Appendix A" attached to the petition herein).

On November 26, 1927 W. A. Yarborough, having been ordered to show cause, a consent order was taken, whereby $125.00 per month was allowed as temporary alimony for his wife and $75.00 per month as temporary support of the child. On February 29, 1928, W. A. Yarborough filed a petition for reduction of temporary alimony. On June 9, 1928 a consent order was taken reducing the amount for the wife and daughter to $100.00 per month. On October 24th W. A. Yarborough filed another petition for reduction of amount payable to his wife and daughter. On December 7, 1928 an order was made reducing the amount from $100.00 to $50.00 per month for the months of December, 1928 and January, February and March, 1929, thereafter payments to be restored to $100.00 per month. On January 17, 1929 the case was tried by a jury resulting in a verdict of total divorce (Appendix A of this petition). On January 19, 1929, the Superior Court of Fulton County, Georgia passed a consent order under which W. A. Yarborough was to pay the wife $1750.00. By the terms of the same order, he was also required to pay $1750.00 for the support of Sadie Yarborough, his minor daughter, said payment to be made to R. D. Blowers, as trustee for Sadie Yarborough (see copy of order, Appendix A). The payments required by the Georgia decree were paid. On June 7, 1929, the second divorce verdict was rendered by the jury. On the same date, June 7, 1929, the Superior Court of Fulton County, Georgia, made an order, based on the second jury verdict, granting and decreeing a total divorce.

The lump sum provision—$1750.00 for the wife and $1750.00 for the minor daughter—took the greater part of Yarborough's entire property holdings (R., folios 303-326).

A few months after the divorce, Yarborough remarried. The daughter, Sadie Yarborough, living with her divorced mother in South Carolina, became estranged from her father on account of the divorce and his remarriage, telling and writing him that she did not want to see him (R., folios 219-227, 556-557).

The maternal grandfather, W. D. Blowers (at whose home Sadie Yarborough was living after the court had awarded her custody to her mother) testified as a witness, stating his ability and his willingness to provide for his granddaughter, if her father couldn't do it.

On being asked as to the amount of allowance necessary for the support of his granddaughter, Mr. Blowers said:

> "I know that I would hate to deprive her of anything that I thought I could give her. * * * When she says she wants so and so, I give it to her. If she wants to go to the show I do not limit her. I pay as much as $3.30 for a seat in the theatre. I do not give them gallery seats or anything like that. I give them the best I can afford. (R., folios 69, 72).
>
> "Q. Do you think it is the duty of her father to furnish her theatre tickets at that price?
>
> "A. Oh, yes. He is well and able to do it. * * * I think he is able to take good care of his own blood child."

IV

SPECIFICATIONS OF ERROR

1.

The court erred in finding and holding (a) that the order of the Georgia Court in the divorce action between the parents was insufficient to bind the plaintiff as it did not conform to the requirements of the Georgia Code; and (b) that the Georgia

Court had not rendered such final judgment—fixing the total extent of the father's liability for the support of the child—as to constitute an adjudication in respect of the question of the support of the child.

(The sub-specifications (a) and (b) of specification 1 covering essentially the same point, will be treated together.)

2.

The court erred in finding and holding (a) that the judgment of the Georgia Court determining the amount of the alimony defendant should pay is not binding on the South Carolina courts under the full faith and credit clause of the United States Constitution, as the Superior Court of Fulton County of the State of Georgia—while acquiring jurisdiction of the parents (W. A. Yarborough and Susie B. Yarborough)—did not acquire jurisdiction of the person of the child (Sadie Yarborough) in the suit for divorce between the parents; and (b) that the judgment in the Georgia divorce action is a nullity as to the child and does not render the issue (of the support of the child) *res adjudicata* in the present action between her and her father.

(The sub-specifications (a) and (b) of specification 2, covering essentially the same point, will be treated together.)

V

ARGUMENT

SUMMARY OF THE ARGUMENT

The petitioner contends:

A

1. The decree of divorce made by the Georgia Court in the divorce action between the parents fixed the total extent of the liability of the father and required him to make a lump sum payment to the trustee (in lieu of awarding a monthly allowance of alimony) for the support of the child.

(See Order of Judge Pomeroy, of date January 19, 1929—set out in this petition as "Appendix A.")

2. Such decree of the Georgia Court was an adjudication in respect of the matter of support of the child; and was designed to be, and was, effective to give custody of the child to the wife and to absolve the father (the petitioner herein) from further legal obligation or duty to support the child given by said decree to the custody of the mother.

CITATIONS MAINLY RELIED ON

Coffee v. Coffee, 101 Ga. 787, 28 S. E. 977—The syllabus of the case (prepared, as in all of the Georgia cases, by the court) holds: "Where, in the progress of a suit for a divorce, upon the application of the wife for an allowance of alimony, temporary and permanent, *a decree by consent of parties is rendered*, wherein a sum certain is awarded to the wife, to be paid at stated intervals, and to be by her applied to the support of the minor children, who were, by the same decree, committed to her care, after the termination of the divorce suit, and the rendition of a final decree therein, which was not excepted to, the decree allowing alimony passes beyond the discretionary control of the Circuit Judge, and he has then no authority either to abrogate it or to modify its terms."—The opinion (discussing the question of the effect of a consent judgment) concluded: "*In the present case the parties dispensed with a jury trial upon the question of an allowance of permanent alimony, and, by consent, invoked a decree of the court fixing the allowance upon the terms stated in the decree. This consent having been approved by the court in which the cause was pending, after the grant of the divorce, the court loses control over the subject, and the decree stands as other judgments against the husband.*"

B

1. The Superior Court of Fulton County of the State of Georgia,—in acquiring jurisdiction of the parents (W. A. Yarborough and Susie B. Yarborough) in the divorce

action brought in that court,—had full and unquestionable jurisdiction over all family matters arising out of the marriage relationship involved in said action; and had jurisdiction given by the statute laws by the State of Georgia to make final and effective provision as to the custody of the child born of said marriage; and, correlative with the right to award the custody of said child, had jurisdiction to pass upon and determine the extent of the father's duty to provide for the maintenance and education of the child.

CITATIONS MAINLY RELIED ON

Coffee v. Coffee, 101 Ga. 787, 28 S. E., 977; *Exchange Banking & Trust Co. v. Finley*, 73 S. C. 423, 53 S. E., 649; and *Anderson v. Anderson*, 74 W. Va. 124, 81 S. E., 706.—The child's legal domicil was in Georgia (the place of the father's domicil) and remained there until the Georgia Court decree awarded her custody to her mother. *Barber v. Barber*, 21 How. 582; *Lamar v. Micou*, 112 U. S. 452; *Anderson v. Watt*, 138 U. S. 694.—Ordinarily parent's duty to child is limited to providing support at his place of residence. *State v. Scurry*, 114 S. C., 191; *State v. Lancaster*, 135 S. C., 412, 416.—Duty of parent to support and educate child is reciprocal (or corresponding to) the right of control and is an obligation which is in nearly all of the states enforced under compulsory laws. *Thompson v. Ga. Ry. & Power Co.*, 163 Ga. 598, 136 S. E. 895; *Meyer v. Nebraska*, 262 U. S. 390, 400.

2. The decree of the Georgia Court,—made in the exercise of the jurisdictional powers given said court by the statute laws of the State of Georgia,—specifically determined and adjudged the rights and duties of the father in respect of the custody and support of the child, and rendered the said issue (in respect of the support of the child) res adjudicata within the protection of the full faith and credit clause of the Constitution of the United States.

CITATIONS MAINLY RELIED ON

"The principles of *res adjudicata* apply to questions of jurisdiction as well as other issues." *American Surety Co. v. Baldwin* (United States Supreme Court, Advance Opinions—decision of November 14, 1932).—The applicability of the full faith and credit clause to the Georgia judgment (the decree of January 19, 1929) rests on the interpretation of the Georgia law, the issues made by the pleadings in the Georgia divorce case, and the decree of the court granted therein. *Bates v. Bodie*, 245 U. S. 520; and *Sistare v. Sistare*, 218 U. S. 1. "*The obvious answer would seem to be that for the issues we must go to the pleadings; for the response to them and their determination, to the judgment;* and that each may furnish a definition of the other." (245 U. S., at page 526). "While the ruling of the court was, of course, primarily based upon the interpretation of the (state) law, the ultimate ruling as to the inapplicability of the full faith and credit clause of the Constitution was expressly rested upon the decision of this court." (218 U. S., at page 10.)

POINT A.

The decree made by the Georgia Court fixed the total extent of the father's liability for support of the child.

It should be kept in mind that the cross bill filed by the wife to the husband's suit for divorce prayed for the custody of the child, and also prayed "that provision for permanent alimony be made for the support of respondent and the minor child above mentioned, and for the education of said minor child." The response to this prayer is the decree of January 19, 1929, which is set out in full in "Appendix A", annexed to the petition herein. The first thing adjudged by the decree is that "the following settlement be hereby made the order of this court, the same being in full settlement of temporary **and permanent alimony** in said case, and in full settlement of all other demands of every nature whatsoever between the parties." (R., folio 533). Further on in the decree it is adjudged that $1,-

750.00 shall be paid by the father to his wife, and a like amount to Blowers as trustee for the daughter, and it is adjudged that the amount paid Blowers "shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure." (R., folios 535, 538). It is then provided that "upon compliance of this order by the plaintiff he shall be relieved of **all payments of alimony** and counsel fees in said case",—except, however, the requirement of making a $50.00 payment which was due under a prior order of the court.

The case of *Bates v. Bodie* (245 U. S., on page 526) is authority for the proposition that *"for the issues we must go to the pleadings; for the response to them and their determination, to the judgment; and that each may furnish a definition of the other."*

The highest and most authoritative evidence that the term "permanent alimony", as used in the decree, is applicable to the provision made for the support of the child (as well as being applicable to the provision made for the support of the wife) is also afforded by reference to the Georgia Code and decisions of the Georgia court giving it interpretation and effect.

The caption of Section 2981 (shown by reference to "Appendix B") reads: "ALIMONY FOR CHILDREN ON FINAL TRIAL."

In numerous of the Georgia decisions "alimony" is used in referring to the provision for the support of children as well as for the wife. The word is so used in *Coffee v. Coffee,* 28 S. E., 977. In *Gilbert v. Gilbert,* 107 S. E., 490, 492, the Court speaks of "the amount allowable as alimony as support for the children." In *Gaines v. Gaines,* 150 S. E., 645, the statement of facts recites that the wife prayed for "permanent alimony for the support of herself and child," and that an order had been passed requiring "the defendant to pay $20.00 per month as alimony for the support of the child." And in the prevailing opinion, in referring to the *Coffee case,* the Court says that Coffee was required to pay "$5.00 monthly on account of

alimony for his children." In *Pace v. Bergquist*, 159 S. E., 678, the Court speaks of the allowance for the child as "an allowance in the nature of alimony," and also refers to the *Coffee case* as a case where the allowance for the wife and children was "in full settlement of both temporary and permanent alimony."

The decree of the Georgia court—awarding the custody of the child to the mother and requiring the payment of a specified total amount for the support of the child—was effective to absolve the father from further legal obligation or duty to support the child.

The position of the petitioner is that the effect of the Georgia divorce decree was to absolve him from liability to support the minor daughter, and that the courts of South Carolina are bound to recognize that effect of the decree under the full faith and credit clause of the federal Constitution.

Minor children are never formal parties to a divorce suit between their parents, yet in all such cases the courts make disposition of the custody of the children and provide for their maintenance; and, in disposing of the questions of custody and maintenance, what is done is as binding on the child as it is on the parents. All the cases hold that the court having jurisdiction of the parents in a divorce suit, in destroying the marital relationship, has jurisdiction to deal completely with that relationship by determining—as incidental questions—the matter of the custody and support of the children.

In *Coffee v. Coffee*, 101 Ga. 787, 28 S. E. 977 (where application was made by the wife for the allowance of alimony, temporary and permanent, and a consent decree was made awarding the wife a sum certain, to be paid at stated intervals, and to be by her applied to the support of the minor children), the court held that, after the termination of the divorce suit, and the rendition of a final decree therein, which was not excepted to, the decision allowing alimony had passed beyond the discretionary control of the Circuit Judge, and he had then no authority either to abrogate it or to modify its terms. In this connection, the court said:

"In the present case, the parties dispensed with a jury trial upon the question of an allowance of permanent alimony, and, by consent, invoked a decree of the court fixing the allowance upon the terms stated in the decree. This consent having been approved by the court in which the cause was pending, after the grant of the divorce, the court loses control over the subject and the decree stands as other judgments against the husband."

The later Georgia cases have repeatedly recognized and reaffirmed the doctrine of the Coffee decision.—See: *Johnson v. Johnson*, 131 Ga. 606, 62 S. E. 1044; *Gilbert v. Gilbert*, 151 Ga. 520, 107 S. E. 490; *Robison v. Robison*, 29 Ga. App. 521, 116 S. E. 19; *Sikes v. Sikes*, 158 Ga. 406, 123 S. E. 694; *Hooten v. Hooten*, 168 Ga. 86, 147 S. E. 373; *Gaines v. Gaines* (Ga.), 150 S. E. 645; and, particularly, *Pace v. Bergquist*, (Ga.), 159 S. E. 678, (the latter decision having been *erroneously* regarded in the South Carolina Supreme Court opinion as authority for the position that a consent order is not a final judgment as to the amount of alimony payable for the support of the child.

POINT B

The Georgia Court had jurisdiction in the divorce action between the parents to pass upon all matters pertaining to the custody and support of the children.

A point considerably stressed in the opinion of the South Carolina Supreme Court, and, also, in the opinion denying the petition for rehearing, is that the minor child, Sadie Yarborough, was resident in another state at the time of the divorce proceedings, was not a formal party to the action, was not represented by guardian *ad litem*, was never served in any way with process, and was never within the jurisdiction of the Georgia Court.

On such premise it is said in the opinion that "it is certain that the Supreme Court of Fulton County, of the State of Georgia, while acquiring jurisdiction of W. A. Yarborough

and Susie B. Yarborough, never acquired jurisdiction of the person of the infant, Sadie Yarborough, in the suit for divorce between the parents."

We have not found any similar holding in the cases. On the contrary, it has been repeatedly recognized in the decisions and is the customary practice,—under the construction given by the courts to the Georgia statutes,—that questions of the custody of the children and allowances for their support are to be determined in divorce actions (to which the children are not parties) as fully as if they had been made parties in the action. The Georgia decisions cited under our discussion of "Point A" are illustrative.

The South Carolina case of *Exchange Banking & Trust Co. v. Finley,* 73 S. C. 423, 53 S. E., 649, recognizes, without discussion, that a judgment in divorce proceedings in the State of Illinois absolved the father from all legal obligations to support the child. There is no suggestion in the opinion that the Illinois action was in any way different from an ordinary divorce action where the court determines the matter of custody and support of the child as a matter necessarily incident to the divorce proceedings. It is obvious that the mere presence of the child in Illinois where the decree was rendered, could not give the court a broader jurisdiction, or the decree greater efficacy or validity, than would otherwise have been the case.

In *Anderson v. Anderson,* 74 W. Va. 124, 81 S. E. 706, 707, the wife brought suit for divorce in Indiana, and the husband was personally served within the jurisdiction. Either before or shortly after the service upon him, he took the children and sent them to West Virginia, and later himself moved there. He filed an answer in the divorce suit, contesting it on jurisdictional grounds, as well as on the merits. The divorce was granted the wife, and she was awarded the custody of the children. She then went to West Virginia and instituted habeas corpus proceedings for the custody of the children. The father attacked the Indiana decree of divorce on various grounds, among others, that the Indiana court had no jurisdiction to award the custody of the children to the mother because they

were in West Virginia when the suit for divorce was commenced, and when the final decree was entered. The wife's right to the custody of the children was sustained, the court saying:

> "That the children may not have been within the jurisdiction of the court at the time of the institution of the suit or entry of the decree is immaterial, since the parties litigant were the father and mother, and the cause of action, the right of custody, in so far as it affected the children, was between them, and the court had full jurisdiction over them, with power to render a personal decree."

In *Flack v. Flack,* 180 N. C. 594, 105 S. E. 268, 269, the Supreme Court of North Carolina held:

> "As incident to the trial of the action of divorce, the court, having jurisdiction of the cause and the parties, was fully empowered to make such disposition as to the care and custody of the children as the right and justice of the case might require."

In *Mayer v. Mayer,* 154 Mich. 386, 19 L. R. A. (N. S.) 245, the wife obtained a divorce in Oklahoma. It awarded her the custody of the children, and required the husband to pay her a certain monthly sum during her life or until she married again, and also to pay a certain sum monthly for the support of the children until the children came of age "or until the further order of the court". After the divorce proceedings the wife took the children and moved to New York, while the husband went to Detroit. The wife later moved to Detroit and brought this suit for arrears of alimony due her as well as the children. The court held that she was entitled to a judgment for the alimony due her, since the award of the Oklahoma court was a final judgment, but that the complaint should be dismissed as to the alimony due the children because the award of the Oklahoma court was not a final judgment, being subject to modification at any time by that court. From the opinion it is clear that the fact that the children were not formal parties to the Oklahoma divorce suit was not a factor in the

decision, and the court would have sustained a judgment for the children's alimony if the Oklahoma judgment had been a final judgment as to the children's alimony.

In *Sistare v. Sistare*, 218 U. S. 1, the wife obtained a decree of separation and for alimony of $22.50 per week for the support of herself and a minor child in the courts of New York. She thereafter sued the husband in Connecticut for arrears of alimony. She obtained judgment, which was reversed by the Supreme Court of the State, and the case went to the United States Supreme Court. This court held that the decree for alimony for the mother and child was a final decree, not subject to modification, and being such the courts of Connecticut were bound, under the full faith and credit clause of the federal constitution, to recognize it, and, therefore, that the wife was entitled to enforce the judgment in the Connecticut action.

All of the foregoing cases are authoritative, either expressly or by clear and necessary implication, for the proposition that it is not necessary for a child to be a formal party to a suit for separation or divorce wherein the child's right to support is adjudicated and the decree is binding on all courts. The conclusion would seem inevitable (a) that a child is not a necessary party to its parent's divorce; (b) that assuming the foreign court has jurisdiction of the parents, it has jurisdiction of the matter of the child's support; (c) that a judgment for such support, which is final and not subject to modification, is a valid judgment; and (d) that it must be recognized under the federal constitution.

The matter of the actual residence of the child has nothing to do with the question of the court's jurisdiction. In such cases, the court is dealing with a status,—the marital relationship,—and the court having jurisdiction of the parents in a divorce suit, has jurisdiction to destroy the marital relationship and, incidently to deal completely with the rights and duties of the parties to the relationship, which includes the children whose custody and support must be determined by the court. The State of Georgia, therefore, having to fix the allowance for the permanent support of the child of divorced

parents, and the state having exercised that power under a statute specifying how such permanent support shall be fixed and that when so fixed the father shall be absolved from further liability for support, the child is as much bound thereby as if it had been a formal party to the suit.

It is a fundamental proposition that the child's legal domicil at the time of the divorce, was in Georgia, where her father was domiciled.—*Lamar v. Micou,* 112 U. S. 452.

Even as to the wife, Susie Yarborough, the principle applies that a voluntary separation does not operate to give the wife a different domiciliation in law from that of her husband.—*Barber v. Barber,* 21 How. 582. In this connection, in *Anderson v. Watt,* 138 U. S. 694, 706, it has been said: "*And although the wife may be residing in another place, the domicil of the husband is her domicil.* Story Confl. Laws, sec. 46; Wharton Confl. Laws, sec. 43; and cases cited. Even where a wife is living apart from her husband without sufficient cause, his domicil is in law her domicil."

Neither in the record of the Georgia divorce proceedings, nor in the testimony given in the present case, do we find any facts sufficient to take the wife, Susie Yarborough,—prior to the granting of the divorce decree,—out of the application of the rule declared. It is obvious that the child's living with her mother in Hendersonville, N. C. (where she was living at the time of the commencement of the divorce proceedings) was not sufficient, of itself, to change her legal domicil from the State of Georgia. It was not until the decree of the Georgia Court allowing the mother custody of the child, that the child had a different domiciliation in law from that of her father.

It may also be regarded as definitely established in the courts of the State of South Carolina, as well as in the courts of the State of Georgia, that it is not the duty of the father to maintain the child except at the place of his residence. In a comparatively recent decision—*State v. Lancaster,* 135 S. C. 412, 416—we find statement of this principle, as follows: " 'A husband is only required to furnish the necessities of life (to his wife), at *his* place of residence'; unless 'he destroys his home

and provides no other place where she can live'. *State v. Stone*, 111 S. C. 498. 'The same rule applies to child'. *State v. Scurry*, 114 S. C. 192."

Similarly in *Thompson v. Ga. Ry. & Power Co.*, 163 Ga. 598, 136 S. E. 895, we find the statement that the duty of the parent to support the child *and the right to the custody and services of the child* are reciprocal.

To similar effect, also, is *Meyer v. Nebraska*, 262 U. S. 390, 400, where it is said: *"Corresponding to the right of control*, it is the natural duty of the parent to give his children education suitable to their station in life; and nearly all of the states, including Nebraska, enforce this obligation by compulsory laws".

As indicated in *Meyer v. Nebraska, supra*, it is generally,—if not universally—regarded, whenever the subject has been considered, that it is only by virtue of the state laws that the duty of the father, in respect of the support of the child, can be enforced.

As pointed out in *Cunningham v. Cunningham* (— Tex. —, 40 S. W. (2d) 46, 75 A. L. R. 1305, 1312), Corpus Juris states "the rule is that the power of court to allow permanent alimony is wholly statutory and usually the statutes make provision therefore" (19 C. J. sec. 566, p. 243); and that "ordinarily a minor child has no direct right of action in equity against his parent to compel the performance of the laws of duty in respect of maintenance and education". (46 C. J. sec. 50, pp. 1270, 1271).

Similarly, in *Rawlings v. Rawlings* (— Miss. —, 83 So. 146, 7 A. L. R. 1259, 1260), reference is made to 21 Am. & Eng. Enc. Law, 2d ed. 1052, where it is said: "The moral obligation of a parent to support his child is not directly enforcible, *and a court of equity cannot compel the performance of this duty*. The duty may be enforced, however, under statute, or indirectly, as where a stranger supplies an infant with necessaries and recovers therefore against the parent."

The case of *Sikes v. Sikes*, 158 Ga., 406, 123 S. E. 694, is in point to show that the enforcement of the father's duty of

support is treated under the Georgia statutes as making provision that in suits for divorce a support may be allowed the children (without regard to whether the wife is found entitled to alimony) and a judgment for the same enforced as provided by law. But, as the court pointed out, there is no provision in the law, where the wife and mother is dead, for a minor child by his guardian or next friend, to maintain a suit for alimony. The court said: "This is not a petition in equity for the recovery of an amount which the father might be required to pay for the support of the minor child, *even if such equity petition could be maintained*". And, in *Brown v. Brown*, 24 Ga. App. 512, 101 S. E. 315, it is held that the mother who has obtained a decree for alimony and for the support of herself and minor child in another state cannot maintain an original action at law in Georgia, even to recover necessary expenditures made by her after such decree, for the support of the child.

We have found no decision,—and none has been indicated in the opinion in this cause,—that afforded precedent to the South Carolina Supreme Court for its departure from the originally recognized principles declared in the above authorities. There is nothing, certainly, in the South Carolina statutes (the pertinent provisions of which appear herein as "Appendix C" of this petition) to warrant the child's bringing of an action against the father, in her own behalf, to compel him to make an allowance for her support.

The Decree of the Georgia Court determined and adjudged the rights and duties of the father in respect of the custody and support of the child; and rendered the said issue (in respect of the support of the child) res adjudicata within the protection of the full faith and credit clause of the Constitution of the United States.

The applicability of the full faith and credit clause to the Georgia judgment (the decree of January 19, 1929) rests on the interpretation of the Georgia law, the issues made by the pleadings in the Georgia divorce case, and the decree of the court granted therein.—*Bates v. Bodie*, 245 U. S. 520; *Sistare v. Sistare*, 218 U. S. 1; and *Am. Surety Co. v. Baldwin* (United

States Supreme Court Advance Opinions—decision of November 14, 1932).

In *Bates v. Bodie*,—where the question was whether a Nebraska decree gave full faith and credit to an Arkansas decree allowing a stated sum in full of alimony,—Mr. Justice McKenna, speaking for this court, said: "We are not called upon to trace or consider the reason of the opinion further than to determine the correctness of its elements, and this determination can be made by reference to the divorce proceedings in Arkansas and the decree of the court rendered therein. * * * But how find the matters in issue or the points controverted upon the determination of which the judgment was rendered? The obvious answer would seem to be that **for the issues we must go to the pleadings; for the response to them and their determination, to the judgment;** and that each may furnish a definition of the other". (245 U. S. at p. 525, 526).

In *Sistare v. Sistare*,—in discussing a closely similar situation where the Connecticut court undertook to construe the effect of a New York court decision,—this court said: "While the ruling of the court was, of course, primarily based upon the interpretation of the (New York) law, the ultimate ruling as to the inapplicability of the full faith and credit clause of the Constitution was expressly rested upon the decision of this court".

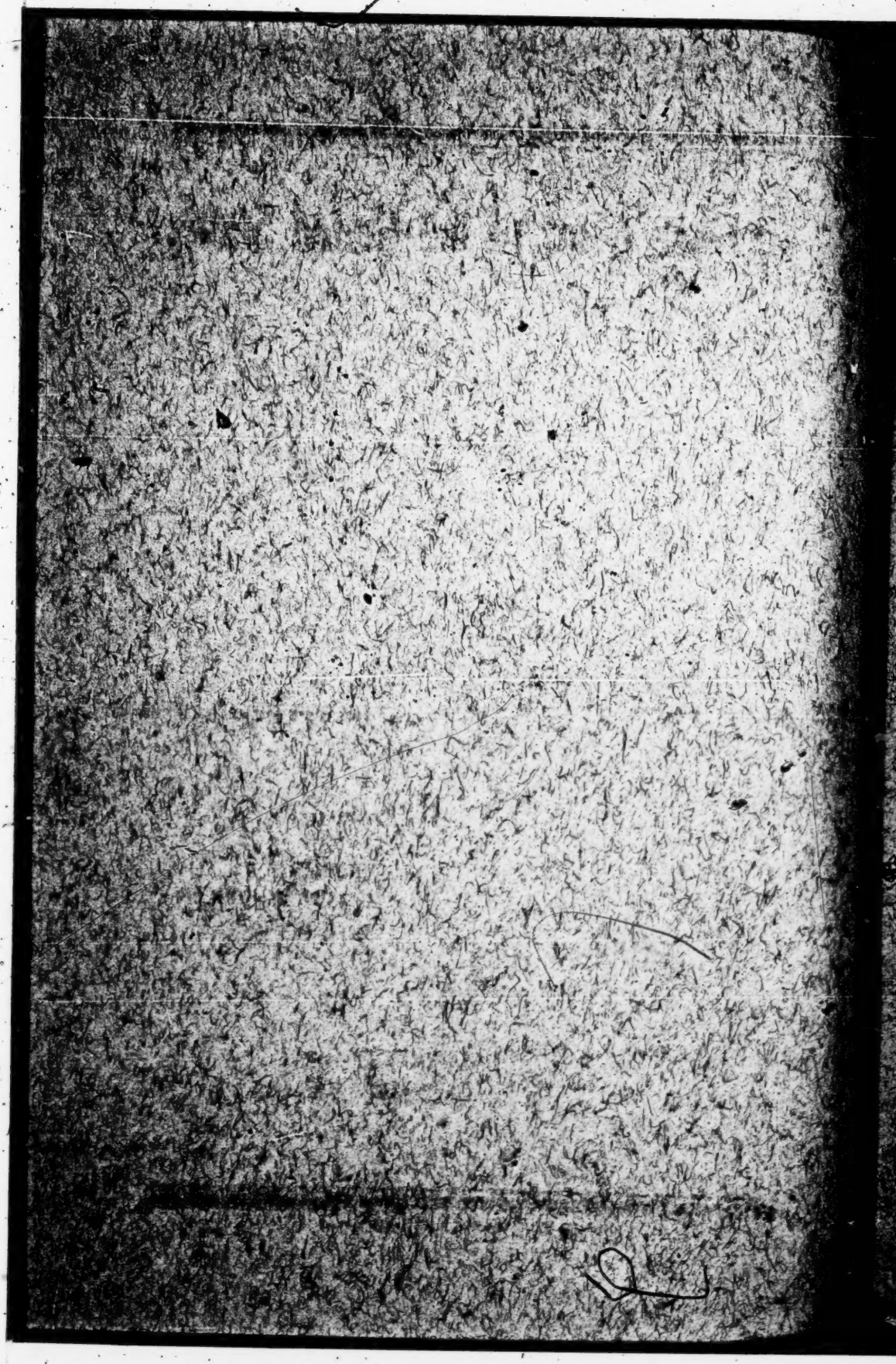
An authoritative statement in point appears, also, in the recent case of *American Surety Co. v. Baldwin, supra*, where it is said: "The full faith and credit clause, together with the legislation pursuant thereto, applies to judicial proceedings of a state court drawn in question in an independent proceeding in the federal (or other) courts. * * * The principles of *res adjudicata* **apply to questions of jurisdiction** as well as to other issues. *Baldwin v. Iowa State Traveling Men's Asso.* 283 U. S. 522, 75 L. ed. 1244, 51 S. Ct. 517. They are given effect even where the proceeding in the federal (or other) court is to enjoin the enforcement of a state judgment, **if the issue was made and open to litigation in the original action,** or was determined in an independent proceeding in the state courts."

CONCLUSION

In view of the nature of the case, the manifest oversight appearing in the opinion of the fundamental principles and considerations governing the application of the full faith and credit clause of the Constitution of the United States, and the dangerous precedent which would be established if the opinion should be allowed to stand, it is respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers, in order that the error of the South Carolina Supreme Court, in the holdings declared in its said opinion, may be corrected; and it is submitted that to such end a writ of certiorari should be granted and this court should review the decision of the South Carolina Supreme Court and finally reverse it.

Dated: March 20, 1933.

R. E. WHITING,
STEPHEN NETTLES,
Counsel for Petitioner.



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Supreme Court of the United States

OCTOBER TERM, 1933

No. 14

W. A. YARBOROUGH, PETITIONER,

versus

SADIE YARBOROUGH, BY HER GUARDIAN AD LITEM, R. D. BLOWERS, RESPONDENT

BRIEF FOR PETITIONER

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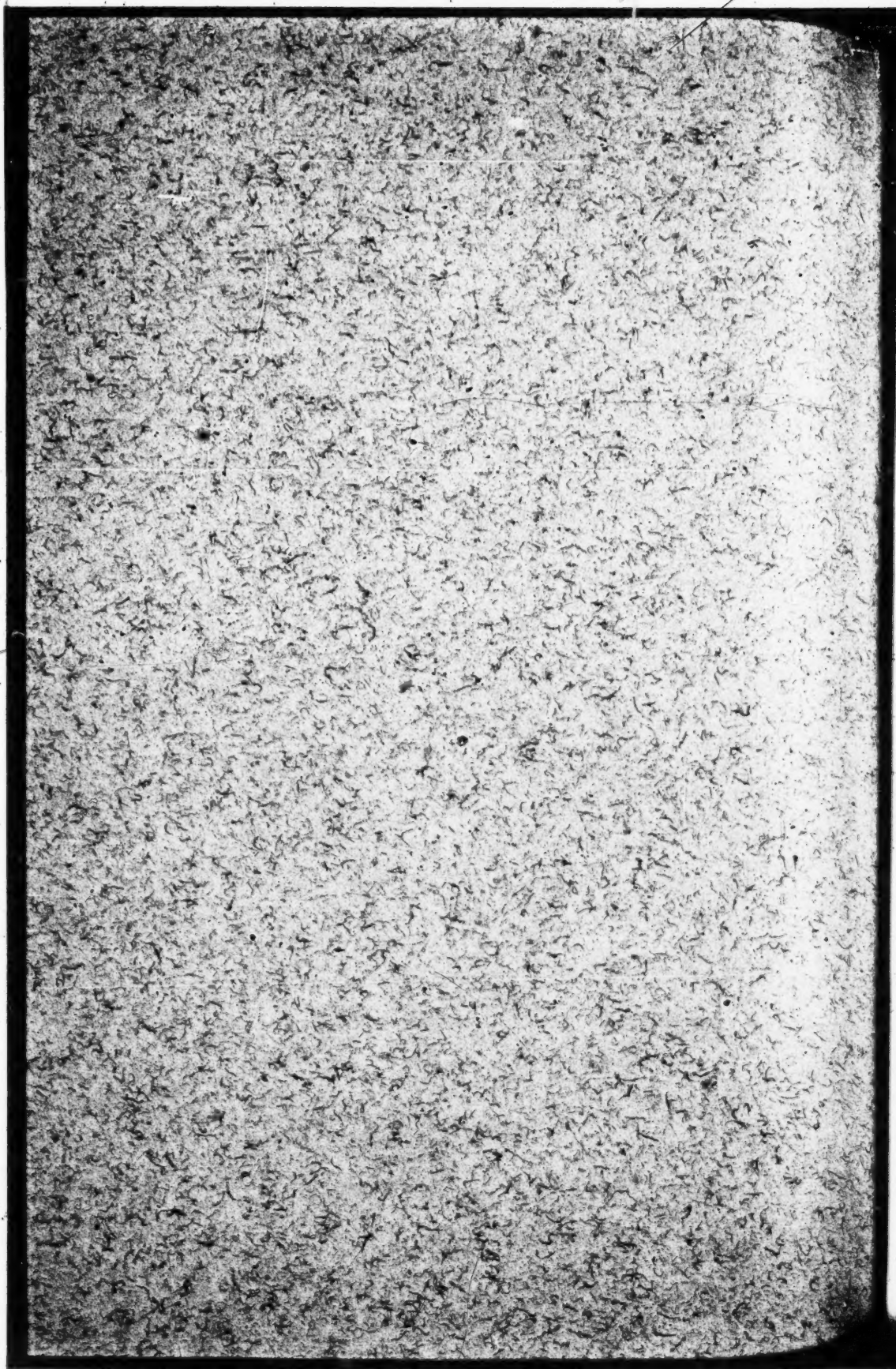

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BRIEF FOR PETITIONER

I

The Opinion of the Court Below

The opinion of the Supreme Court of South Carolina, including the opinion on the denial of the petition for rehearing, is officially reported in 168 S. C., 46. Both opinions are also reported in 166 S. E., 877.

II

Jurisdiction

The jurisdiction of this Court is based upon a writ of *certiorari*, which, on May 8, 1933, was granted under Sec-

tion 237, amended, of the Judicial Code (28 U. S. C. A., 344-b), to review the judgment of the Supreme Court of South Carolina, affirming the judgment of the Court of Common Pleas for Spartanburg County, South Carolina.

The answer filed by the defendant (R., page 4), as well as his exceptions on appeal to the Supreme Court (R., pages 107-108), invoked the protection of the full faith and credit clause of the federal constitution.

III

Statement of the Case

The defendant, W. A. Yarborough, and his family, consisting of his wife, Susie B. Yarborough, and their daughter, Sadie Yarborough, were living together in Atlanta, Georgia, at a home provided by defendant, for about a year before he filed suit for divorce. The family went to Atlanta about September 5, 1926 (R., page 43). The daughter attended public school for the school year 1926-27, and in June, 1927, the wife went to Hendersonville, N. C. The daughter first went to a camp at Toccoa, Ga., and later in the summer joined her mother at Hendersonville, a summer resort (R., page 44).

On September 21, 1927, Yarborough filed suit for divorce in the Superior Court of Fulton County (Atlanta Circuit), Georgia. The wife was served by publication, but, on November 25, 1927, she appeared by counsel and filed an answer and cross-bill. In her cross-bill she asked for a total divorce, the custody of the child, temporary alimony for herself and the child, and "that provision for permanent alimony be made for the support of respondent and the minor child above mentioned and for the education of said minor child." (R., page 89).

On November 26, 1927, the day after the wife's answer and cross-bill were filed, Yarborough was ordered to show cause on December 3, 1927, why temporary alimony and counsel fees should not be granted, and, on January 12, 1928, a consent order was entered requiring him to pay the wife

$125.00 per month for her support and $75.00 per month for the support of the child "until the further order of the court or the final disposition of this case." He was also ordered to pay his wife's attorneys $100.00 "on account of attorneys' fees" (R., pages 89-90).

Thereafter, on petition of Yarborough, the amount of temporary alimony was twice reduced until, by an order dated December 7, 1928, he was excused from the payment of all accrued temporary alimony and the monthly allowance for the mother and child was fixed at $50.00 per month for the months of December, 1928, and January, February, and March, 1929; and after March, 1929, it was to be increased to $100.00 per month. (R., pages 90-98).

On January 17, 1929, the first jury trial was had, resulting in a verdict for divorce (R., page 94). Two days later, January 19, 1929, a consent order was filed awarding the wife $1,750.00 and a trustee for the daughter $1,750.00 "in full settlement of temporary and permanent alimony in the case." The trustee for the daughter was to expend her allowance "in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention, and other necessary items of expenditure." It was also provided that upon compliance with this order Yarborough should be relieved "of all payments of alimony" (R., pages 94-96, where the order is given in full).

On June 7, 1929, the second and final verdict for a divorce was rendered by a jury, and on the same day an order, based upon the two concurring verdicts, was entered decreeing a total divorce (R., page 96).

The lump sum provision made for the permanent support of the wife and daughter—$1,750.00 for each—was paid by Yarborough, and represented the greater part of his entire property holdings (R., pages 54-58).

A few months after the divorce Yarborough married again. His daughter, living with her divorced mother in South Carolina, became estranged from him, and finally refused to see him (R., pages 38-41, 98).

Some fifteen months after the final decree of divorce (August 20, 1930), the daughter, Sadie Yarborough, through her maternal grandfather as guardian *ad litem*, brought this action in equity (in the Court of Common Pleas for Spartanburg County, South Carolina) against her father, W. A. Yarborough, for support. Jurisdiction of the defendant was obtained by attaching funds of his in the amount of $2,119.55. The defendant appeared generally, and, in addition to other defenses, plead in bar of the action that in the Georgia divorce proceedings he had made provision for the permanent support of his daughter; that such payment operated in full and final discharge of his obligation to support her; and that the decree in the Georgia suit was *res adjudicata* of the matter of support and binding on the South Carolina court (R., pages 1-2).

The case was heard on circuit, and a decree was entered turning over the attached funds to a trustee, to provide $50.00 per month for the minor (R., page 2). The defendant then appealed to the Supreme Court of South Carolina, and by his exceptions again raised the constitutional question (R., pages 107-108, Exceptions 1, 2, 3 and 8).

The Supreme Court of South Carolina filed its decision on June 27, 1932, affirming the decree below on two grounds —(1) that the minor daughter was not a party to the Georgia divorce suit and was not a resident of Georgia, and the Court therefore did not have jurisdiction to determine her right to support, and (2) that the decree of the Georgia Court providing for her support did not conform to the provisions of the Georgia law, and therefore was not *res adjudicata* of her right to support. (R., page 109; 168 South Carolina Reports, 46.)

The defendant then filed a petition for rehearing. This was denied on December 22, 1932, on the ground that the Georgia Court granting the divorce had no jurisdiction over the minor, and she was, therefore, not bound by the decree in the divorce suit. (R., page 121; 168 South Carolina Reports, 49.)

IV

Specifications of Error

1. The Court erred in finding and holding that the decree of the Georgia Court in the divorce action did not bind the plaintiff because it did not provide for her permanent support in the manner prescribed by the Georgia law.

2. The Court erred in finding and holding that the decree of the Georgia Court in the divorce action did not absolve the defendant from further obligation to support the plaintiff.

3. The Court erred in finding and holding that the decree of the Georgia Court in the divorce action was not binding on the Courts of South Carolina under Article IV, Section 1, of the Constitution of the United States of America.

V

Summary of the Argument

A. The decree of the Georgia Court provided for the permanent support of the child.

B. The decree of the Georgia Court absolved the father from further obligation to support the child, and is res adjudicata of the matter of the child's support.

VI

Argument

POINT A

The decree of the Georgia Court provided for the permanent support of the child.

The cross-bill filed by the wife to the husband's suit for divorce prayed for the custody of the child and "that provision for permanent alimony be made for the support of respondent and the minor child above-mentioned, and for the education of said minor child." The response to this prayer is the decree of Judge Pomeroy of January 19, 1929,

which is set out in full at pages 94-96 of the record. The first thing adjudged by the decree is that "the following settlement be hereby made the order of this Court, the same being in full settlement of temporary *and permanent alimony* in said case, and in full settlement of all other demands of every nature whatsoever between the parties." Further on in the decree it is adjudged that $1,750.00 shall be paid by Yarborough to his wife and a like amount to Blowers as trustee for the daughter, and it is adjudged that the amount paid Blowers "shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention, and other necessary items of expenditure." It is further decreed that "upon the compliance with this order by the plaintiff he shall be relieved of *all payments of alimony* and counsel fees in said case", except a certain $50.00 payment due under a prior order.

The case of *Bates v. Bodie*, 245 U. S. at page 526, is authority for the proposition that "for the issues one must go to the pleadings; for the response to them and their determination, to the judgment; and that each may furnish a definition of the other."

The highest and most authoritative evidence that the term "permanent alimony", as used in the decree of Judge Pomeroy, includes the provision made for the support of the child, as well as the provision made for the support of the wife, is the fact that both the legislature and the Courts of Georgia use the term in that inclusive sense.

The caption of Section 2981 (which is the statute requiring that permanent support for children shall be provided in the divorce suit) reads: *"Alimony For Children On Final Trial."*

In numerous of the Georgia decisions "alimony" is used in referring to the provision for the support of the children as well as to that for the wife. The word is so used in *Coffee v. Coffee*, 101 Ga. 787, 28 S. E. 977. In *Gilbert v. Gilbert*, 151 Ga. 520, 107 S. E. 490, the Court speaks of "the amount allowable as alimony as support for the children." In *Gaines*

v. Gaines, 169 Ga. 432, 150 S. E. 645, the statement of facts recites that the wife prayed for "permanent alimony for the support of herself and child," and that an order had been passed requiring "the defendant to pay $20.00 per month as alimony for the support of the child." And in the prevailing opinion in that case, in referring to the *Coffee case*, the Court says that Coffee was required to pay "$5.00 monthly on account of alimony for his children." In *Pace v. Bergquist*, 173 Ga. 112, 159 S. E. 678, the Court speaks of the allowance for the child as as "an allowance in the nature of alimony," and refers to the *Coffee case* as a case where the allowance for the wife and children was "in full settlement of both temporary and permanent alimony."

The holding of the Supreme Court of South Carolina that the decree of Judge Pomeroy provided only temporary and not permanent alimony for the child seems to be based, not on the fact that Judge Pomeroy did not intend thereby to provide permanent alimony, but rather on the proposition that as matter of law such provision could not be made by a consent decree, or before the second verdict. (See the opinion, 168 S. C. at pages 56-57; Record, pages 117-118.)

It is true that Section 2981 (R., page 102), does provide that the jury, on the second or final verdict, shall fix the permanent alimony for the children, but it is equally true that the Supreme Court of Georgia has through a long line of cases held that a consent decree, fixing such permanent alimony, is just as efficacious as the verdict of a jury.

In *Coffee v. Coffee*, 101 Ga. 787, 28 S. E. 977, by a consent decree in a divorce suit, permanent alimony was provided for the children, and thereafter a decree of divorce was entered. Subsequently the father sought to be relieved of the alimony payments. It was held that the decree was *res adjudicata* of the matter of support, and the father could not be relieved of the judgment. Said the Court:

> "In the present case the parties dispensed with a jury trial upon the question of an allowance of per-

manent alimony, and by consent invoked a decree of the Court fixing the allowance upon the terms stated in the decree. This consent having been approved by the Court in which the cause was pending, after the grant of the divorce the Court loses control over the subject, and the decree stands as other judgments against the husband."

To the same effect see:

Johnson v. Johnson, 131 Ga. 606, 62 S. E. 1044.
Gilbert v. Gilbert, 151 Ga. 520, 107 S. E. 490.
Robison v. Robison, 29 Ga. App. 521, 116 S. E. 19.
Sikes v. Sikes, 158 Ga. 406, 123 S. E. 694.
Hooten v. Hooten, 168 Ga. 86, 147 S. E. 373.
Gaines v. Gaines, 169 Ga. 432, 150 S. E. 645.
Pace v. Bergguist, 173 Ga. 112, 159 S. E. 678.

It would seem that the Supreme Court of South Carolina entirely misconstrued the holdings in the *Gilbert case* and the *Pace case*. When the Court says in the *Gilbert case* that it is the duty of the jury to fix the permanent alimony, it is merely saying that the matter of fixing the permanent alimony is one of fact, and whether fixed by the Court by a consent decree, or by the jury by a verdict, it is a matter of fact, and as such cannot be altered by the Court. The permanent alimony in that case was actually fixed by a consent decree, and not by the jury. In the *Pace case* there was a consent order granting the child $30.00 per month "until the further order of the Court." This was held to be an order for the payment of temporary alimony, and as there was no subsequent decree granting the child permanent alimony, and temporary alimony stops with the final decree of divorce, it was held that the father was not guilty of contempt for refusing to continue the $30.00 payments after the final decree.

POINT B

The decree of the Georgia Court absolved the father from further obligation to support the child, and is res adjudicata of the matter of the child's support.

Sections 2981 and 2982 of the Georgia Code of 1926, annotated, read as follows:

> "Sect. 2981 (Sect. 2462) ALIMONY FOR CHILDREN ON FINAL TRIAL.—If the jury, on the second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid; and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified."
>
> "Sect. 2982. (Sect. 2463) JUDGMENTS, HOW ENFORCED.—Such orders, decrees, or verdicts permanent or temporary, in favor of the children or family of the husband, may be enforced as those in favor of the wife exclusively."

In *Maddox v. Patterson*, 80 Ga. 719, 6 S. E. 581, the minor child of a deceased father claimed a year's support out of his estate as against creditors. It was objected that the child was not entitled because it was in the custody of the mother under a decree of absolute divorce. The Court held in favor of the child, saying:

> "The judgment of divorce did not grant alimony, either permanent or temporary, to the wife or the child; and so far as appears there was no discharge of the father from his obligation to support his child."

In *Coffee v. Coffee*, 101 Ga. 787, the father petitioned to be relieved from certain permanent alimony payments in favor of his children provided for in a consent decree in a divorce suit. In holding that he could not be relieved, the Court said:

> "The allowance for the support of these children rested upon a contract, which, receiving the sanction of the court by judicial decree, imposed upon the husband the responsibility with which he was already charged by law, namely, the support of the children. . . . She became by virtue of this decree, in her capacity as trustee for her minor children, a judgment creditor, and the court could no more vacate that judgment so rendered in her favor than it could vacate a judgment rendered against the husband in favor of a creditor of his upon any other account. Whatever right of revision of this decree may have existed was extinguished by the grant of the total divorce."

The doctrine of the *Coffee case*, that a consent decree granting permanent alimony to minor children, entered in a suit resulting in a decree of divorce, is *res adjudicata* of the matter of the children's support, has been repeatedly affirmed and is the settled law of Georgia.

Johnson v. Johnson, 131 Ga. 606, 62 S. E. 1044.
Brown v. Brown, 132 Ga. 712, 64 S. E. 1092.
Wilkins v. Wilkins, 146 Ga. 382, 91 S. E. 415.
Gilbert v. Gilbert, 151 Ga. 520, 107 S. E. 490.
Robison v. Robison, 29 Ga. Apps. 521, 116 S. E. 19.
Sikes v. Sikes, 158 Ga. 406, 123 S. E. 694.
Hooten v. Hooten, 168 Ga. 86, 147 S. E. 373.
Gaines v. Gaines, 169 Ga. 432, 150 S. E. 645.
Pace v. Bergquist, 173 Ga. 112, 159 S. E. 678.

In *Exchange Banking & Trust Co. v. Finley*, 73 S. C. 423, the Supreme Court of South Carolina recognizes, without discussion and as a matter of course, that a judgment in divorce proceedings in the State of Illinois absolved the father from further obligation to support his child.

In *Mayer v. Mayer*, 154 Mich. 386, 19 L. R. A. N. S. 245, the wife obtained a divorce in Oklahoma. It awarded her the custody of the children, and required the husband to pay her a certain monthly sum during her life or until she married again, and also to pay a certain sum monthly

for the support of the children until the children came of age "or until the further order of the court." After the divorce proceedings the wife took the children and moved to New York, while the husband went to Detroit. The wife later moved to Detroit and brought this suit for arrears of alimony due her as well as the children. The Court held that she was entitled to a judgment for the alimony due her, since the award of the Oklahoma Court was a final judgment, but that the complaint should be dismissed as to the alimony due the children because the award of the Oklahoma Court was not a final judgment, being subject to modification at any time by that Court. From the opinion it is clear that the fact that the children were not formal parties to the Oklahoma divorce suit was not a factor in the decision, and the Court would have sustained a judgment for the children's alimony if the Oklahoma judgment had been a final judgment as to the children's alimony.

In *Sistare v. Sistare*, 218 U. S. 1, the wife obtained a decree of separation and for alimony of $22.50 per week for the support of herself and a minor child in the Courts of New York. She thereafter sued the husband in Connecticut for arrears of alimony. She obtained judgment, which was reversed by the Supreme Court of the State, and the case went to the United States Supreme Court. This Court held that the decree for alimony for the mother and child was a final decree, not subject to modification, and being such the Courts of Connecticut were bound, under the full faith and credit clause of the federal constitution, to recognize it, and, therefore, that the wife was entitled to enforce the judgment in the Connecticut action.

All of the foregoing cases are authoritative, either expressly or by clear and necessary implication, for the proposition that it is not necessary for a child to be a formal party to its parents' divorce suit in order for the child's right of support to be finally adjudicated.

The matter of the actual residence of the child would seem to have nothing to do with the Court's jurisdiction to ad-

judicate the matter of support. In divorce cases the Court deals with a status, a relationship, and if it has personal jurisdiction of the parents, it has complete jurisdiction to destroy the relationship, and incidentally to deal finally with the matter of support of the children. The State of Georgia, therefore, having the power to fix the allowance for the permanent support of the child of divorced parents, and the State having exercised that power by a statutory enactment, specifying how such permanent support shall be fixed, and that when so fixed the father shall be absolved from further liability to support the child, the child is as much bound thereby as if it had been a formal party to the suit.

What actually happens in such a case is that the obligation to support, imposed by the State, is removed by the State. In so doing the State does not act upon the child, who may be beyond the jurisdiction, but upon the father, who is within the jurisdiction.

Under the decree of divorce the custody of Sadie Yarborough was given to her mother. The obligation to support the child passed from the father to the mother, apart from the sum given the trustee for the support of the child. See *Thompson v. Ga. Ry. & Power Co.*, 163 Ga. 598, 136 S. E. 895, where it is said, in accordance with the general law, that the duty of the parent to support the child, and the right of custody are reciprocal. In *State v. Lancaster*, 135 S. C. 412, it was held that a father is required to support his children only at his residence. As Sadie Yarborough, at the time she brought this suit, was living with her mother in South Carolina, who was charged with the duty of supporting her, it is difficult to see why the Courts of South Carolina should insist upon also charging her father, a non-resident, who was not entitled to her custody, with her support. It cannot be questioned that after the divorce Yarborough was not liable for the support of his minor daughter at his residence (Georgia), and under the *Lancaster case* he was not liable to support her in any other place (South Carolina).

Under such circumstances, for the Courts of South Carolina to refuse to recognize that, as a result of the Georgia divorce and the proceedings therein, Yarborough was absolved from the obligation to support his minor daughter, amounts to imposing upon a non-resident a greater burden than is imposed upon the resident, and is a denial to the non-resident of the benefit of the rule of law which is applied to the resident in the *Lancaster case.*

Further, there is no South Carolina decision or statute, and none is indicated in the opinion of the Supreme Court, permitting a child to bring a direct action in equity against its father for support. There is no such right of action.

Rawlings v. Rawlings, 121 Miss. 140, 83 So. 146.
Alling v. Ading, 52 N. J. Eq. 92, 27 Atl. 655,
Hooten v. Hooten (1929), 168 Ga. 86, 147 S. E. 373.

We also maintain that as matter of law and fact the child's legal domicil was in Georgia at the time of the divorce. Her father's domicil was there, and her domicil followed his. *Lamar v. Micou,* 112 U. S. 452. Even as to the wife, her domicil was with her husband. A mere voluntary separation does not operate to give the wife a separate domicil. *Barker v. Barker,* 21 How. 582. In this connection, see *Anderson v. Watt,* 138 U. S. 694, 706, where it is said: "And although the wife may be residing in another place, the domicil of the husband is her domicil. Story, Confl. Laws, sec. 46; Wharton, Confl. Laws, sec. 43; and cases cited. Even where a wife is living apart from her husband without sufficient cause, his domicil is in law her domicil."

Neither in the record of the Georgia divorce proceedings, nor in the testimony given in the present case, do we find any facts sufficient to take the wife out of the application of the rule, prior to the granting of the divorce decree. Obviously, the child's living with her mother in Hendersonville, N. C. at the time of the commencement of the divorce suit was not sufficient, of itself, to change the child's domicil from the State of Georgia. It was not until the decree of the Georgia Court allowing the mother the custody of the child,

that the child acquired a different domicil from that of her father.

CONCLUSION

The judgment in the Georgia divorce suit was res adjudicata of Sadie Yarborough's right to support from her father, W. A. Yarborough, and was a bar to this action; and the failure of the Supreme Court of South Carolina so to hold was a violation of W. A. Yarborough's rights under the full faith and credit clause of the federal constitution, entitling him to a reversal of the judgment below.

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Counsel for Defendant.

APPENDIX

REFERENCES TO RECENT GEORGIA DECISIONS APPLICABLE TO SHOW THE SCOPE AND EFFECT OF DIVORCE DECREES UNDER GEORGIA STATUTES TO DETERMINE MATTERS OF PARENTAL RIGHTS AND OBLIGATIONS

Pace v. Bergquist

(173 Ga. 112, 159 S. E. 678)

A consent order in the case, issued during the pendancy of the divorce proceedings, contained a provision requiring a payment by the father of $30.00 per month "until the further order of the court" for the support of the minor child. The final verdict and decree for divorce did not provide for alimony for either wife or child. The father—failing thereafter to keep up the payments for the support of the child—was adjudged in contempt. The decision of the Georgia Supreme Court reversed the ruling of the Court below, stating the grounds for such reversal as follows:

"1. The effect of the judgment granting temporary alimony to the mother for the child, in stated monthly payments 'until further order of the court,' when construed in connection with Civil Code 1910, Sec. 2978, was that the payments should continue, under the supervisory power of the court to modify or revoke the same, until final judgment, when the payments would cease altogether by operation of law. *Holleman v. Holleman,* 69 Ga. 676; *Osborne v. Osborne,* 146 Ga. 344, 91 S. E. 61; *Black v. Black,* 150 Ga. 672, 104 S. E. 775. The fact that the judgment was rendered by consent did not extend the force and effect of the judgment beyond the final verdict and decree in the divorce case. Such judgment contemplates alimony pending the cause. *Higgs v. Higgs,* 144 Ga. 20, 85 S. E. 1041.

"2. After the wife obtained the decree of total divorce, the matrimonial relation no longer existed, and she could not thereafter obtain an order or judgment

requiring her former husband to pay to her alimony, or an allowance in the nature of alimony, in order that she might support their minor child, whose custody had been awarded her under the above order or judgment granting temporary alimony for the support of the child. *Hall v. Hall,* 141 Ga. 361, 80 S. E. 992; *Watson v. Watson,* 168 Ga. 573, 148 S. E. 386. . . .

"3. Where the wife, on account of the misconduct of the husband, obtains an order granting her temporary alimony for the support of their minor child and awarding her custody of such child, and afterwards obtains a verdict and decree granting to her a total divorce, without any provision requiring the father to pay permanent alimony for the support of the child, the father is not relieved of his legal obligation for the proper support of their child; and, if he fails or refuses to discharge this obligation, the mother, in an original action, may recover of the father the amount of expenditures made by her after such decree for the proper support of their child. *Brown v. Brown,* 132 Ga. 712, 64 S. E. 1092; *Hall v. Hall, supra; Hooten v. Hooten,* 168 Ga. 86, 147 S. E. 373."

Gaines v. Gaines

(169 Ga. 432, 150 S. E. 645)

In a suit commenced July 27, 1927, an order was made, of date August 10, 1927, granting the wife $50.00 per month as temporary alimony for the support of herself and minor child. On March 19, 1929, an order was made, awarding the custody of the child to the mother and requiring the defendant to pay $20.00 per month as alimony for the support of the child for five years and thereafter to pay $25.00 per month until the child should have reached eighteen years of age. Counsel for both parties consented in writing to the entry of this decree, which recited that it was made pursuant to the agreement of counsel.

On April 5, 1929, Mrs. Gaines filed a motion (through other counsel) to vacate this decree on the ground that it was entered without her knowledge and consent, and that her counsel had no authority to consent to it, and that she was entitled to a larger amount. Another ground of the motion was that the decree for alimony was rendered by the Court without a jury; that the matter should have been submitted to a jury; and that the decree made in the suit for alimony forfeited the rights of the child for a period of three years during minority.

An order vacating the judgment for permanent alimony, and granting a new trial, was sustained—under a majority opinion of the Supreme Court—on the ground that "the judgment vacated was rendered on March 19, 1929, and the petition to vacate was filed April 5, 1929; both dates being within the same term of the Superior Court of Fulton County, to wit: the term beginning on the first Monday in March. Therefore, it not appearing that the discretion of the trial Court was abused, the judgment will be affirmed". Commenting on the case of *Coffee v. Coffee*, 101 Ga. 787, 28 S. E. 977, it was pointed out that "the original judgment in that case was rendered at the January term, 1891, and the motion to abrogate or modify the decree was made at the July term, 1896".

A dissenting opinion by Justices Beck and Atkinson was to the effect that the consent order fixed the allowance for permanent support; disposed of the question of permanent alimony; stood upon the same footing as the finding of the jury provided for in Section 2981; and that "the judge had no more authority to alter this judgment than he would have had to set aside a verdict of the jury making an allowance for permanent alimony".

Under either of the above referred to opinions, there can be no doubt whatever, it would seem, as to the final and binding effect of a consent decree determining the extent of the father's parental obligation for the support of a child awarded to the custody of the mother. The consent having

been approved by the Court in which the case was pending, the decree stands as other judgments; and cannot be questioned, after the termination of the case in which the judgment was rendered, except upon such charge of fraud or collusion as to vitiate the judgment.

Hooten v. Hooten

(168 Ga. 86, 147 S. E. 373)

The petition of the children, by their mother, as next friend, sought an allowance of $100.00 per month as permanent support. The father demurred upon the grounds: "(a) The petition is not authorized by law. (b) There is no provision of law authorizing or sanctioning it. (c) It sets forth no cause of action. (d) Children cannot sue their father for support by themselves or their next friend where there is a total divorce between their father and mother. (e) It appears from the petition that the divorced wife of the defendant is suing for a sum named, for herself for the support of the children, which she has no right to do." The Court sustained the demurrer and dismissed the petition.

This ruling was sustained in an opinion by the Georgia Supreme Court, wherein it was said:

> "We must further determine the law fixing the extent of the father's duty to support and educate his minor children. 'Until majority, it is the duty of the father to provide for the maintenance, protection, and education of his child.' Civil Code 1910, Section 3020. So, generally, it is the duty of the father, having the ability to do so, to support his minor children. . . . This is so because it is his duty, under the above Section of the Code, to furnish such support if he is able.
>
> "To this general rule there are exceptions. One of these grows out of the principle that the duty to support and the right to the custody and the earnings of his minor children are reciprocal (Civil Code 1910, Section 3020, 3021; 46 C. J. 1256, Section 34), and

that whatever deprives the parent of the right to the custody and services of the child, without fault on his part, relieves him from the duty to support the child (*Thompson v. Georgia Ry. & Power Co.*, 163 Ga. 598, 602, 136 S. E. 895). Another exception arises where the parents have been divorced, and provision for the support of the children has been provided in the divorce proceeding. In suits for divorce, the judge presiding may, either in term or vacation, grant alimony, or decree a sum sufficient for the support of the family of the husband dependent upon him, and who have a legal claim upon his support, as well as for the support of his wife; . . . and in case a sum is awarded for the support of said family, the husband shall not be liable to third persons for necessaries furnished them.' Civil Code 1910, Section 2980. If the jury trying a divorce case on the final verdict find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support, and in what manner, how often, to whom, and until when it shall be paid; and this they may do if, from any legal cause, the wife may not be entitled to permanent alimony; and when such support shall thus be granted, the husband shall not be liable to third persons for necessaries furnished the children embraced in the verdict. Section 2981.

"The petition discloses that the husband and wife had been divorced and that the wife has ever since had the custody of the children, who were 'mere babies' when the divorce was granted. The petition is silent as to the grant of alimony to the wife for her support and that of the children. In these circumstances, construing the petition most strongly against the pleader, it is a fair presumption that the judge and jury, in granting to the wife a total divorce, made some provision for the support of the minor children. It would certainly be incumbent upon the children, who, after

the grant of the divorce, bring an action by their mother as next friend against their father for an allowance for their support, to allege facts which take their case out of the above exceptions, and in the absence of such allegations the petition does not make a case which would entitle the children to a judgment compelling the father to make an allowance for their support. . . .

"In *Joyner v. Joyner*, 131 Ga. 217, 225, 62 S. E. 182, 185 (18 L. R. A. (N. S.) 647, 127 Am. St. Rep. 220), this court held that 'alimony will not be allowed to the wife on a separate proceeding, after a total divorce has been granted at the instance of the husband.' In that case, the wife was seeking alimony in her own behalf alone. In *Hall v. Hall*, 141 Ga. 361, 80 S. E. 992, this court again approved the principle announced in *Joyner v. Joyner*, and further ruled that the wife cannot 'in her own name, and in behalf of their minor (children), obtain an order or judgment requiring her former husband to pay her alimony, or an allowance in the nature of alimony, in order that she may support' their children, 'whose custody has been awarded to her in the decree of divorce'. These decisions would be vain and without effect, if the divorced wife were permitted to bring suit in the name of minor children, who are of such tender age as to be unable to give direction or to be consulted about the institution of the proceeding, for the purpose of compelling the father to pay monthly installments of money, in the nature of alimony, which would go to his divorced wife in extinguishment of expenses paid or obligations incurred in supporting the minor children of the husband.

"Again, in *Sikes v. Sikes*, 158 Ga. 406, 123 S. E. 694, this court held that 'a minor child cannot maintain in his own name, nor by guardian or next friend, a suit for alimony, temporary or permanent, against his father, the wife and mother being dead.' The liability of the father to support his minor child is in no way terminated by the death of the mother. By such afflic-

tion the importance of the discharge of this duty by the father was rendered more imperative. We see no valid reason why, if a child cannot sue in its own name its father for support in the nature of alimony, and cannot do so by some relative or other person as next friend, it can institute such suit against the father by its mother, who has been divorced from the father, as its next friend. So we are of the opinion that this suit was not maintainable under the decisions above cited.

"In *Sikes v. Sikes, supra,* the question whether a petition in equity would lie for the recovery of an amount which the father might be required to pay for the support of his minor children was left open. In the first place, it is sufficient to say that the proceeding in the present case is no more one in equity than the one dealt with in *Sikes v. Sikes.* In that case the proceeding was brought to enforce the performance by the father of his duty to support his minor child. It is true that the petitioner prayed to have his father pay alimony for the support of the child; but this in no way affected the real purpose of the suit. The purpose of that proceeding and the proceeding in the present case is identical. The proceeding in the present case is no more one in equity than the proceeding in the *Sikes case.*

"Conceding, however, that the present proceeding is one in equity, can it be maintained in the name of these infants by their mother as next friend? In other words, *has a court of equity jurisdiction to enforce the duty of a father to support his minor children, in the absence of a statute conferring such power?* On this subject Corpus Juris says: 'But it has been held that equity has general jurisdiction of a suit by a wife to compel her husband to support their infant children, and a wife who has furnished the children with necessaries may maintain an action at law against the father to recover therefor, in jurisdictions where the wife's marital disabilities have been removed by statute. Ordinarily a minor child has no direct right of action in

equity against its parent to compel the performance of the latter's duty in respect of maintenance and education." 43 C. J. 1270, Section 50 (B). * * *.

"In support of the proposition last cited from Corpus Juris, the authors cite a number of cases in Section 50, note 92. We believe, under the cases cited in this note and other cases upon this subject, that the weight of authority is in favor of the proposition that these infants cannot, in their own name or by next friend, maintain a suit in equity against their father to compel him to furnish them with support and education, where their divorced mother has their custody and is supporting them upon the strength of her credit. Where a wife obtains a decree of divorce from her husband, and no question as to the support of the children is determined by the decree, or provision therefor made by it or by contract, the father is not relieved from his obligation to support his children; and, if he fail or refuse to discharge such obligation, the mother in an original action may recover of the father the amount of the expenditures made by her after such decree for the proper support of the children. *Hall v. Hall, supra.* This ruling is fortified by the consideration that actions by minors against their father should not be encouraged; certainly where their mother can recover from the father expenditures made by her in support of their children, where the father has not been relieved in some way from his duty to support them."

A dissenting opinion in this case, filed by Justices Hill and Beck, seems predicated on the assumption that support had not been provided for the children in the verdict or decree in the divorce proceedings, thus rendering applicable Civil Code, Section 2469, as follows: "Until such provision is made, voluntarily, or by decree or order of the court, the husband shall be liable to third persons for the board and support of the wife and for all necessaries furnished to her, or for the benefit of his children in her custody." In this

connection, and as exemplifying the reason of dissent from the majority opinion, the dissenting opinion cited *Brown v. Brown*, 132 Ga. 712, 4 S. E. 1092, to the effect that "the legal obligation of the father to support his children, and his liability to third persons for proper support furnished the children, exists after as well as before a decree of divorce granted the wife because of the misconduct of the husband, *where no support of the children is provided for in the divorce proceedings.*"

Correspondingly, of course, where such provision is made, and the father is absolved from liability for the further support of the children, there seems no reason nor justification, under any viewpoint of consideration,—either that of the majority opinion in the *Hooten case* or that of the minority opinion,—to hold the father to further liability; for, in such cases, even as to necessities furnished to the children by third persons, the father is expressly relieved from liability by the Code provision.

Gilbert v. Gilbert

(151 Ga. 520, 107 S. E. 490)

It was held in this case that the judgment and decree of divorce, awarding stated sums as permanent alimony for the wife and for the support and maintenance of the children, "was final in its nature and passed beyond the control of the court for the purposes of change and modification." After discussing applicable Georgia statutes, the opinion concluded:

> "Cases from other states, under the rulings of which the judge would be authorized to modify a decree allowing permanent alimony, will be found to have been rendered in the construction of the statutes of those states which differ from ours, and are not binding as authority here, in view of our statutes placing it within the province of the jury to fix the amount of alimony and allowance for the support of the minor children.

The amount allowable as alimony as support for the children in the instant case was *res adjudicata.*"

Robison v. Robison

(20 Ga. 521, 116 S. E. 19)

This case, in a syllabus by the court, states relevant propositions of law, concerning the custody and support of children under the Georgia statutes and the decisions construing the same, as follows:

"The father, if alive, is the natural guardian of his child. Civ. Code 1910, Section 3032. As such, it is the father's duty to provide for the maintenance and protection of the child until majority (Civ. Code 1910, Section 3020); and during such period the child remains under the control of the father, who is entitled to his services and the proceeds of his labor. Civ. Code 1910, Section 3021.

"This parental power, however, may be lost, among other ways provided by the statute, by voluntary contract, releasing the right to a third person (Civ. Code 1910, Section 3021 (1)). * * *

"Where the father's rights are, as in the instant case, thus relinquished, the parental rights and obligations devolve upon the person standing *in loco parentis. Eaves v. Fears,* 131 Ga. 820 (2), 64 S. E. 269; *Southern R. Co. v. Flemister,* 120 Ga. 524 (5), 48 S. E. 160; *Stoddard v. Campbell,* 27 Ga. App. 363 (1), 108 S. E. 311. Where a guardian of the person has been thus appointed, his power over the person of his ward is the same with the father over his child, the guardian standing in his place; and in like manner it is the duty of the guardian to protect and maintain and, according to the circumstances of the ward, to educate him.' Civ. Code 1910, Section 3058.

"Where, upon the father's relinquishment of his parental authority and control, the ordinary has appointed

a guardian of the person of a minor, the guardian is entitled to the services of his ward, and upon him, *prima facie*, devolves the duty of maintenance and education. In the instant petition against the father by one who it is alleged was thus regularly and duly appointed guardian of the person of a minor, to recover the cost of alleged necessaries furnished by the petitioner to the child, there being no special contract whereby the father assumed the duty of liability for the furnishing of the items claimed, no cause of action was stated.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 14

W. A. YARBOROUGH, *Petitioner,*

versus

SADIE YARBOROUGH, *by her Guardian Ad Litem,*
R. D. Blowers, Respondent.

BRIEF FOR RESPONDENT

STATEMENT

This action was brought in the Court of Common Pleas for Spartanburg County on August 20, 1930, by the respondent, minor child, against her father, the petitioner, for maintenance, education and support. Hereinafter the petitioner will be referred to as defendant, and the respondent as plaintiff.

The complaint alleged substantially that she was an only child of the defendant, resided with her mother in Spartanburg, S. C., and was without funds and dependent upon her father; that the defendant was a resident of Atlanta, Ga. The sum of $2,119.50 belonging to the defendant was attached in Spartanburg, and the defendant was personally served with the summons and complaint, answered and appeared personally.

The Yarboroughs were married at Spartanburg, S. C., on September 3, 1904, where they lived until September 5, 1926, when they moved to Atlanta. The plaintiff was born in July of 1914. Mrs. Yarborough and the plaintiff have, since leaving Atlanta, lived in Spartanburg, except for a short while spent in Hendersonville, N. C., during the summer of 1927. The defendant filed a suit for divorce in Atlanta on September 21, 1927. Mrs. Yarborough was served by publication, but later filed a cross bill and personally appeared.

On January 12, 1928, by order of the Georgia Court, Yarborough was required to pay the wife $125 per month for her support, and $75 per month for the support of the child, "until the further order of the Court or the final disposition of this case." (R. pp. 89-90.)

On petition of Yarborough, the allowances for the wife and child were twice reduced. On January 17, 1929, the first jury trial resulted in a verdict of divorce. No allowance for either wife or child was fixed by this verdict. On January 19, 1929, a decree, consented to by the wife and Yarborough and their respective attorneys, was passed by which $1,750 was paid to Mrs. Yarborough, and a like amount to R. D. Blowers as trustee for Sadie Yarborough, the order further providing that "upon compliance with this order by the plaintiff, he shall be relieved of all payments of alimony and counsel fees." The right of Yarborough to custody of the daughter for part time was reserved in this order.

On June 7, 1929, a verdict of a second jury was had authorizing a total divorce. On the same day, an order was passed annulling the marriage and granting liberty to both parties to marry again. No mention of alimony for the wife or allowance for the daughter was made in this order or the second verdict of the jury. (R. 96.)

The defendant re-married in August of 1929, about two months after the total divorce was granted.

A decree was entered in the Spartanburg Common Pleas Court on August 21, 1931, by which the attached funds were turned over to a trustee, from which plaintiff was to be paid fifty dollars per month.

An appeal to the Supreme Court resulted in an affirmance on June 27, 1932, of the decree on Circuit. The defendant petitioned for a rehearing, and, on December 22, 1932, in a second opinion, this petition was denied. On petition of defendant, a writ of certiorari to this Court was granted May 8, 1933.

SUMMARY OF THE ARGUMENT

Point A

The decree of the Georgia Court providing for the support of the minor child did not conform to the provisions of the Georgia Law, and therefore was not *res adjudicata* of her right to support.

Point B

The minor daughter, respondent here, was not a resident of Georgia at the time the divorce suit was brought; was not a party to the suit, and therefore the holding of the South Carolina Court that the Georgia Court did not have jurisdiction is not in violation of the Full Faith and Credit clause of the Federal Constitution, and is not *res adjudicata* of her right to support.

ARGUMENT

Point A

The decree of the Georgia Court providing for the support of the minor did not conform to the provisions of the Georgia law, and therefore was not *res adjudicata* of her right to support.

Section 2981 of the Georgia Code provides: "If the jury, on the second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom and until when it shall be paid." (R. 102.)

The order of Judge Pomeroy awarding $1,750 to the minor was passed January 19, 1929, two days after the first verdict of the jury, and nearly five months before the second and final verdict. Neither verdict made mention of the support for the minor. Twice before the temporary support for the minor had been changed. It will be observed that the code provides that the jury in specifying alimony for the wife shall also specify permanent support for the children. Judge Pomeroy's order further provides that upon compliance with his order petitioner shall be relieved of all payments of alimony and counsel fees. It does not relieve him from further *support* of the child. By reading the Georgia code, it will be seen that ALIMONY is one thing and PERMANENT SUPPORT of the minor is another. In addition, Mrs. Yarborough testified that she understood the right was reserved to ask for more support for the minor. (R. 71.) By the terms of the order passed April 17, 1928, the petitioner, W. A. Yarborough, was allowed the privilege of visiting his daughter, and of having her with him at stated times. (R. 90.) On December 7, 1928, another order was passed re-affirming the right of the petitioner to see and visit

with his minor daughter. (R. 93.) In the order awarding the $1,750 for the minor appears the following provision: "The provisions of the order of the Court heretofore entered fixing the times and the places when plaintiff, W. A. Yarborough, shall have the right to visit and have with him, out of the presence of the defendant, the said Sadie Yarborough, minor daughter of plaintiff and defendant, are hereby continued in force." (R. 95.) Thus indicating that the Court recognized the right of the petitioner to have custody of the child part of the time and his obligation by implication necessarily to support her.

"An allowance of alimony is distinct from an allowance which a husband may be required to pay for the maintenance of the children, and hence alimony is not to be construed as an award for the support of a child of the marriage whose custody is also awarded to the wife." 9 R. C. L. 482.

"The legal and natural duty of the father to support his children is not to be evaded by him on the ground of his wrongdoing, or even of any dissensions whatsoever with his wife. A natural father would not think of doing so, and an unnatural one should not be permitted to do so." 9 R. C. L. 481.

"Contract between father and mother of minor children for a separation held not to release parental rights from the father to the mother, within Civil Code 1910, 3021, nor relieve the father from obligation to support the children." *McCarter v. McCarter*, 74 S. E. 308; 10 Ga. App. 754.

"The conduct of the mother, or her refusal to live with the father, is no defense to a prosecution for abandonment of the child." *Moore v. State*, 57 S. E. 1016; 1 Ga. App. 502.

In *Tillman v. Tillman*, 93 S. C. 281; 76 S. E. 559, the Supreme Court of South Carolina held: "The judgment

of a Court as to custody of children is never *final* (italics added), for it must at all times be free to act upon such a change of conditions as requires a change of custody." If the Court can change the custody, the necessity for changing the degree of support may follow.

In *Buckminster v. Buckminster*, 38 Vt. 248; 88 Am. Dec. 652, the Court held: "A decree made at the time of the divorce cannot anticipate the changes which may occur in the condition of the parents, or in their habits and character, and their fitness to have the custody and care of the children." Nor can such a decree anticipate the ability of the father to support the child nor the necessity of the child. An absolute divorce terminates the marriage relations, but not so with the relation of the father to his child. The obligation to support it remains.

"Some cases hold that while the judgment is *res adjudicata* in the state of its rendition, and elsewhere as far as the parents are concerned, it is not *res adjudicata* as to the right of some other state where the children may subsequently be, to determine the custody of the children as their welfare may require." 9 R. C. L. 477.

Point B

The minor daughter, respondent here, was not a resident of Georgia at the time the divorce suit was brought; was not a party to the suit, and therefore the holding of the South Carolina Court that the Georgia Court did not have jurisdiction is not in violation of the Full Faith and Credit clause of the Federal Constitution, and is not *res adjudicata* of her right to support.

It should be borne in mind that the wife and child were living in Spartanburg, S. C., when the divorce suit was begun; the child was never within the jurisdiction of the

Georgia Court, was not a party to the divorce suit, was never served with any process in that case, nor was she represented therein by a guardian ad litem.

"It is a universal principle as old as the law that the proceedings of a court without jurisdiction are a nullity and its judgment without effect either on the person or property. Hence it is a principle of natural justice that before the rights of an individual can be bound by judicial sentence, he shall have notice, either actual or constructive, of the proceedings against him, or in other words that the court shall have jurisdiction. This rule applies to personal actions and proceedings in rem." 14 R. C. L. 1031.

Likewise, Section 401 of the Civil Code of South Carolina provides, "when an infant is a party, he must appear by guardian, who may be appointed by the Court in which the action is prosecuted, or by a judge thereof, or a Judge of Probate, Clerk of Court, or by a master in those counties where the office of master now or may hereafter exist."

"The only method known to our law for bringing an infant before a Court is by guardian ad litem, who is appointed to conduct the defense of the infant who has no discretion to select an attorney to represent him." *Turner v. Barraud*, 102 Va. 324; 46 S. E. 318.

In *Carrigan v. Drake*, 36 S. C. 354, the Supreme Court of South Carolina held: "A guardian ad litem must be appointed for an infant defendant before a valid judgment can be rendered against him."

In *Burnett v. Summerlin*, 110 Ga. 349; 35 S. E. 655, the Georgia Supreme Court said: "A judgment against a minor defendant who has been served with process does not bind her where no guardian ad litem was appointed."

"In partition proceeding, in which guardian ad litem for infant defendant, on petition of father, with whom she re-

sided. without notice to infant, and in which service on infant was accepted by her father for her, the Court did not have jurisdiction over infant." *Lanham v. Bomar,* 123 S. C. 483; 124 S. E. 635.

In *Brandon v. Brandon,* 154 Ga. 661; 115 S. E. 115, the Court held: "Ohio divorce decree awarding custody of child to wife is not entitled to obligatory enforcement in Georgia under the full faith and credit clause of the United States Constitution and the statute on the same subject (Civil Code 1910, Section 6672) where the husband resided in Georgia and was served by publication."

In *Cason v. Cason,* 123 S. E. 713, the Georgia Court said: "The Court was without power and authority to award the custody of the children to the mother on the temporary hearing for a period of time in extent of the final verdict and decree in the case."

"In the strict sense of the term parties to a judgment or decree, in the eye of the law, are those only who are named as such in the record, and are properly served with process, or enter their appearance, etc." 15 R. C. L. 1009; *Orthwein v. Thomas,* 127 Ill. 554; 21 N. E. 430.

In *Haddock v. Haddock,* 201 U. S. 561, this Court held: "The mere domicil within the state of one party to the marriage does not give the courts of that state jurisdiction to render a decree of divorce enforceable in all the other states by virtue of the full faith and credit clause of the Federal Constitution against a non-resident who did not appear and was only constructively served with notice of the pendency of the action."

In *Haddock v. Haddock,* Supra, this Court said:

"It must always be borne in mind that it is elementary that where the full faith and credit clause of the constitution is invoked to compel the enforcement in one state of a decree rendered in another, the question of the jurisdiction of the

Court by which the decree was rendered is open to enquiry. And if there was no jurisdiction, either of the subject matter or of the person, of the defendant, the Courts of another state are not required, by virtue of the full faith and credit clause of the constitution, to enforce such decree." *National Exchange Bank v. Wiley,* 195 U. S. 259; 25 S. Ct. 70.

We have found no exception to the rule that a judgment of a foreign court is not binding upon any state under the full faith and credit clause of the United States Constitution, where the court of the foreign state had not acquired jurisdiction of the person whose rights were sought to be affected. As Mr. Justice Bonham so well said in his very able opinion denying the rehearing in this case, "Acceding to the proposition that the state, in proper circumstances, must give full faith and credit to the judgments of other states of the union, it does not follow that such judgments may not be collaterally attacked for the purpose of showing that the foreign court did not have jurisdiction of the person whose rights are affected by the judgment."

CONCLUSION

When the divorce suit was begun the wife and daughter were in South Carolina, (sent there by the husband and father). Jurisdiction of the wife was obtained by personal service and her appearance. The daughter was never in the jurisdiction of the Georgia Court, was never served with any process, and no representative appeared for her. The plaintiff was a citizen of South Carolina, and therefore the decree of the Georgia Court is not *res adjudicata* of her support.

Respectfully submitted,

C. ERSKINE DANIEL,

Attorney for Respondent.

LYLES & DANIEL,
Spartanburg, S. C.,
Of Counsel for Respondent.

SUPREME COURT OF THE UNITED STATES.

No. 14.—October Term, 1933.

W. A. Yarborough, Petitioner,
vs.
Sadie Yarborough, by her Guardian *ad litem.*
} On Writ of Certiorari to the Supreme Court of South Carolina.

[December 4, 1933.]

Mr. Justice Brandeis delivered the opinion of the Court.

On August 10, 1930, Sadie Yarborough, then sixteen years of age, was living with her maternal grandfather, R. D. Blowers, at Spartansburg, South Carolina. Suing by him as guardian *ad litem*, she brought this action in a court of that State to require her father, W. A. Yarborough, a resident of Atlanta, Georgia, to make provision for her education and maintenance. She alleged "that she is now ready for college and is without funds and, unless the defendant makes provision for her, will be denied the necessities of life and an education, and will be dependent upon the charity of others."[1] Jurisdiction was obtained by attachment of defendant's property. Later he was served personally within South Carolina.

In bar of the action, W. A. Yarborough set up, among other defences, a judgment entered in 1929 by the Superior Court of Fulton County, Georgia, in a suit for divorce brought by him against Sadie's mother. He alleged that by the judgment the amount thereafter to be paid by him for Sadie's education and maintenance had been determined; that the sum so fixed had been paid; and that the judgment had been fully satisfied by him. He claimed that in Georgia the judgment was conclusive of the matter here in controversy; that having been satisfied, it relieved him.

[1]There was no suggestion that plaintiff would be destitute or become a public charge. Indeed, her grandfather testified that he was able and willing to provide $125 a month for her education and maintenance (the amount sought by plaintiff), if her father was unable to do so.

under the Georgia law, of all obligation to provide for the education and maintenance of their minor child; and that the full faith and credit clause of the Federal Constitution (Art. IV, Sec. 1) required the South Carolina court to give to that judgment the same effect in this proceeding which it has, and would have, in Georgia. The trial court denied the claim; ordered W. A. Yarborough to pay to the grandfather, as trustee, fifty dollars monthly for Sadie's education and support; and to pay $300 as fees of her counsel. It directed that the property held under the attachment be transferred to R. D. Blowers, trustee, as security for the performance of the order. The judgment was affirmed by the Supreme Court of South Carolina. A petition for rehearing was denied, with opinion. 168 S. C. 46. This Court granted certiorari. 289 U. S. 718.

For sometime prior to June, 1927, W. A. Yarborough, his wife and their daughter Sadie had lived together at Atlanta, Georgia, where he then was, and ever since has been, domiciled. In that month Sadie's mother left Atlanta for Hendersonville, N. C., where she remained during the summer. Sadie joined her there, after a short stay at a camp. In September, 1927, while they were at Hendersonville, W. A. Yarborough brought, in the Superior Court for Fulton County, at Atlanta, suit against his wife for a total divorce on the ground of mental and physical cruelty. Mrs. Yarborough filed an answer and also a cross-suit in which she prayed a total divorce, the custody of the child and "that provision for permanent alimony be made for the support of the respondent and the minor child above mentioned [Sadie], and for the education of said minor child." An order, several times modified, awarded to the wife the custody of Sadie and as temporary alimony, sums "for the support and maintenance of herself and her minor daughter Sadie." Hearings were held from time to time at Atlanta. At some of these, Sadie (and also her grandfather) was personally present. But she was not formally made a party to the litigation; she was not served with process; and no guardian *ad litem* was appointed for her therein.

"Two concurring verdicts favoring a total divorce to plaintiff having been rendered",[2] a decree of total divorce, with the right in

[2] §.2944 of the Georgia Civil Code (1910) provides: "Divorces may be granted by the Superior Court and shall be of two kinds—total or from bed and board. The concurrent verdict of two juries, at different terms of the court, shall be necessary to a total divorce."

each to remarry, was entered on June 7, 1929; the wife was ordered to pay the costs; and jurisdiction of the case "was retained for the purpose of further enforcement of the orders of the court theretofore passed."[3] Among such orders, was the provision for the maintenance and education of Sadie here relied upon as *res judicata*. It was entered on January 17, 1929 (after the rendition of the first verdict), and provided:

"Parties, plaintiff and defendant, having personally and in writing, consented hereto, and their respective counsel of record having likewise in writing consented hereto.

"It is considered, ordered and adjudged that the following settlement be hereby made the order of the Court, the same being in full settlement of temporary and permanent alimony in said case, and in full settlement of all other demands of every nature whatsoever between the parties."

[Then followed, after describing certain mortgages:]

"It is considered, ordered and adjudged that said mortgages be, and they are hereby transferred, sold and assigned by the plaintiff, W. A. Yarborough to the defendant, Mrs. Susie B. Yarborough to the extent of One Thousand, Seven Hundred Fifty Dollars ($1,750.00). and the plaintiff, W. A. Yarborough, does hereby transfer, sell and assign said mortgages to R. D. Blowers, of Spartansburg, South Carolina, as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, to the extent of One Thousand, Seven Hundred Fifty Dollars ($1,750.00). . . . The amount to be thus received by R. D. Blowers as Trustee for Sadie Yarborough, minor daughter of plaintiff and defendant, shall be expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure.

"Upon compliance with this order by the plaintiff, he shall be relieved of all payments of alimony and counsel fees, in said case, except that the payment due under the prior order of Court of the sum of Fifty Dollars ($50.00) for the month of January, 1929, [to Mrs. Yarborough for the support of herself and Sadie] shall be by him paid, in addition to the other amounts hereinbefore named. . . .

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[3]Custody of Sadie had been awarded to the mother; and it had been ordered that the father be "allowed the privilege of visiting his minor daughter, and of having her with him, out of the presence of the defendant, on the second and fourth week-ends of each month, from the close of school hours Friday until Sunday night of said week ends, during school terms, and at like times during vacation; at which times the plaintiff shall be entitled to take said minor daughter on plesaure trips of reasonable distance returning her punctually at the conclusion of the allotted time."

"The provisions of the order of the Court heretofore entered fixing the times and the places when plaintiff, W. A. Yarborough, shall have the right to visit and have with him, out of the presence of the defendant, the said Sadie Yarborough, minor daughter of plaintiff and defendant, are hereby continued in force."

W. A. Yarborough complied fully with this order.

By the law of Georgia, it is the duty of the father to provide for the maintenance and education of his child until maturity.[4] Wilful abandonment of a minor child, leaving it in a dependent condition, is a misdemeanor.[5] The mere loss of custody by the father does not relieve him of his obligation to provide for maintenance and education, even where the custody passes to the mother pursuant to a decree of divorce.[6] If the father fails to make such provision, any person (including a divorced wife) who furnishes necessaries of life to his minor child, may recover from him therefor, unless precluded by the terms of the decree in the divorce suit or otherwise.[7] In case of total divorce, the court is authorized to make, by its decree, final or permanent provision for the maintenance and education of children during minority, and thus fix the extent of the father's obligation.[8] But even if the decree for total divorce fails to include a provision for the support of minor

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[4]Georgia Civil Code (1910), § 3020.

[5]Georgia Penal Code (1910), § 116; Jackson *v.* State, 1 Ga. App. 723.

[6]Brown *v.* Brown, 132 Ga. 712, 715.

[7]Brown *v.* Brown, 132 Ga. 712; Hall *v.* Hall, 141 Ga. 361; Hooten *v.* Hooten, 168 Ga. 86, 90; Garrett *v.* Garrett, 172 Ga. 812; Pace *v.* Berquist, 173 Ga. 112, 114.

[8]The order for permanent alimony for the child is a matter distinct from that for permanent alimony for the wife. See Johnson *v.* Johnson, 131 Ga. 606. The applicable sections of the Georgia Civil Code (1910) annotated are:

"§ 2981. Alimony for children on final trial.—If the jury, on the second or final verdict, find in favor of the wife, they shall also, in providing permanent alimony for her, specify what amount the minor children shall be entitled to for their permanent support; and in what manner, how often, to whom, and until when it shall be paid; and this they may also do, if, from any legal cause, the wife may not be entitled to permanent alimony, and the said children are not in the same category; and when such support shall be thus granted, the husband shall likewise not be liable to third persons for necessaries furnished the children embraced in said verdict who shall be therein specified."

"§ 2982. Judgments, how enforced.—Such orders, decrees, or verdicts, permanent or temporary, in favor of the children or the family of the husband, may be enforced as those in favor of the wife exclusively."

children, they cannot maintain in their own names, or by guardian *ad litem*, or by next friend, an independent suit for an allowance for education and maintenance.[9]

First. It was contended below in the trial court, and there held, that the provision of the decree of the Georgia court directing the payment to R. D. Blowers, trustee, of $1750 to be "expended by him in his discretion for the benefit of the minor child, including her education, support, maintenance, medical attention and other necessary items of expenditure" was not intended to relieve the father from all further liability to support Sadie. This contention appears to have been abandoned. It is clear that Mrs. Yarborough, her husband and the court intended that this provision should absolve Sadie's father from further obligation to support her. That the term "permanent alimony" as used in the decree of the Georgia court, means a final provision for the minor child is shown by both the legislation of the State and the decisions of its highest court.[10] The refusal of the South Carolina court to give the judgment effect as against Sadie is now sought to be justified on other grounds.

Second. It is contended that the order or decree providing for Sadie's permanent support is not *res judicata* because it did not conform to the provisions of the Georgia law. The argument is that the controlling statute required such an order to be entered after the second or final verdict; and that since the order was entered before the second verdict and was not mentioned in it, the order was unauthorized and is void. The Georgia decisions have settled that a consent decree or order fixing permanent alimony for a minor child, at whatever stage of the divorce proceedings it may have been entered, has the same effect as if based upon, and specifically mentioned in, the second verdict of a jury;[11] and that such

[9]Sikes *v.* Sikes, 158 Ga. 406; Hooten *v.* Hooten, 168 Ga. 86. Compare Maddox *v.* Patterson, 80 Ga. 719; Humphreys *v.* Bush, 118 Ga. 628.

[10]See note 7. Also Coffee *v.* Coffee, 101 Ga. 787; Johnson *v.* Johnson, 131 Ga. 606, 608, 609; Gilbert *v.* Gilbert, 151 Ga. 520, 523; Gaines *v.* Gaines, 169 Ga. 432, 434, 435.

[11]Coffee *v.* Coffee, 101 Ga. 787, 790: "In the present case, the parties dispensed with a jury trial upon the question of allowance of permanent alimony, and by consent invoked a decree of the court fixing the allowance upon the terms stated in the decree. This consent having been approved by the court in which the cause was pending after grant of the divorce, the court loses control over the subject, and the decree stands as other judgments against the husband."

an order, like any other judgment, becomes unalterable after the expiration of the term.[12]

Third. It is contended that the Georgia decree is not binding upon Sadie, because she was not a formal party to the suit, was not served with process and no guardian *ad litem* was appointed for her therein. In Georgia, as elsewhere, a property right of a minor can ordinarily be affected by legal proceedings only if these requirements are complied with.[13] But the obligation imposed by the Georgia law upon the father to support his minor child does not vest in the child a property right. This is shown by the fact, among other things, that the minor cannot maintain in his own name, or by guardian *ad litem* or by next friend a suit against his father to enforce the obligation.[14] The provision which the Georgia law makes of permanent alimony for the child during minority is a legal incident of the divorce proceeding. As that suit embraces within its scope the disposition and care of minor children, jurisdiction over the parents confers *eo ipso* jurisdiction over the minor's custody and support. Hence, by the Georgia law, a consent (or other) decree in a divorce suit, fixing permanent alimony for a minor child is binding upon it, although the child was not served with process, was not made a formal party to the suit, and no guardian *ad litem* was appointed therein.[15]

Fourth. It is contended that the order for permanent alimony is not binding upon Sadie because she was not a resident of Georgia at the time it was entered. Being a minor, Sadie's domicile was Georgia, that of her father;[16] and her domicile continued to be in Georgia until entry of the judgment in question. She was not capable by her own act of changing her domicile.[17] Neither the temporary residence in North Carolina at the time the divorce suit

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[12]See Wilkins *v.* Wilkins, 146 Ga. 382; Gilbert *v.* Gilbert, 151 Ga. 520; Gaines *v.* Gaines, 169 Ga. 432, 433. The decree for the child's custody is, however, subject to modification at any time. Brandon *v.* Brandon, 154 Ga. 661.

[13]Groce *v.* Field, 13 Ga. 24; Hill *v.* Printup, 48 Ga. 452, 454.

[14]See cases in note 9.

[15]Compare Kell *v.* Kell, 175 Iowa 647, 650; Snover *v.* Snover, 10 N. J. Eq. 261, 262; Marks *v.* Marks, 22 S. D. 453, 457; Wells *v.* Wells, 11 App. D. C. 392, 394.

[16]Compare Georgia Civil Code (1910), § 2992; Jackson *v.* Southern Flour & Grain Co., 146 Ga. 453; Civil Code (1910), § 2184.

[17]Jackson *v.* Southern Flour & Grain Co., 146 Ga. 453.

was begun,[18] nor her removal with her mother to South Carolina before entry of the judgment, effected a change of Sadie's domicile.[19] It is true that under the Georgia Code, a minor may acquire a domicile apart from the father if he has "voluntarily relinquished his parental authority." But the mere fact that the parents were living separately at the time the suit for divorce was brought and that Sadie was with her mother, does not establish such relinquishment.[20] Compare *Anderson* v. *Watt*, 138 U. S. 694, 706. The character and extent of the father's obligation, and the status of the minor, are determined ordinarily not by the place of the minor's residence but by the law of the father's domicile.[21] Moreover, this is not a case where the scope of the jurisdiction acquired by the Georgia court rests upon the effectiveness of service by publication upon a non-resident. Mrs. Yarborough filed a cross-bill, as well as an answer; and in the cross-bill prayed "that provision for permanent alimony be made for the" support and education of Sadie. Thus the court acquired complete jurisdiction of the marriage status and, as an incident, power to finally determine the extent of her father's obligation to support his minor child.[22]

Fifth. The fact that Sadie has become a resident of South Carolina does not impair the finality of the judgment. South Carolina thereby acquired the jurisdiction to determine her status and the incidents of that status. Upon residents of that State it could impose duties for her benefit. Doubtless, it might have imposed upon her grandfather who was resident there a duty to support Sadie. But the mere fact of Sadie's residence in South Carolina does not give that State the power to impose such a duty upon the father who is not a resident and who long has been domiciled in Georgia.[23] He has fulfilled the duty which he owes her

[18] McDowell *v.* Gould, 166 Ga. 670, 671.

[19] Compare Taylor *v.* Jeter, 33 Ga. 195.

[20] Hunt *v.* Hunt, 94 Ga. 257.

[21] Macdonald *v.* Macdonald, 8 Bell & Murray (2d Series) 830; Coldingham *v.* Smith, [1918] 2 K. B. 90. Compare Irving *v.* Ford, 183 Mass. 448; Blythe *v.* Ayres, 96 Cal. 532.

[22] Schroeder *v.* Schroeder, 144 Ga. 119. Compare State *v.* Rhoades, 29 Wash. 61, 68; Anderson *v.* Anderson, 74 W. Va. 124; State ex rel. Shoemaker *v.* Hall, 257 S. W. (Mo.) 1047; Laumeier *v.* Laumeier, 308 Mo. 201; Laumeier *v.* Laumeier, 237 N. Y. 357; 242 N. Y. 501.

[23] It appeared that W. A. Yarborough, having married again, invited Sadie to his home in Atlanta and offered to maintain her there. She refused.

by the law of his domicile and the judgment of its court. Upon that judgment he is entitled to rely.[24] It was settled by *Sistare* v. *Sistare*, 218 U. S. 1, that the full faith and credit clause applies to an unalterable decree of alimony for a divorced wife. The clause applies, likewise, to an unalterable decree of alimony for a minor child.[25] We need not consider whether South Carolina would have power to require the father, if he were domiciled there, to make further provision for the support, maintenance, or education of his daughter.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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[24]To the effect that in civil law countries and the many jurisdictions which have adopted the civil law the duties of support are determined by the nationality or the domicile of the obligor, see Bar, International Law: Private and Criminal (Tr. Gillespie, 1883, §§ 102, 105); Fiore, Le Droit International Privé (4th ed. French tr. Antoine, 1907) §§ 627-629; Makarov, Précis de Droit International Privé (1933) 409-410; Lapradelle-Niboyet, Répertoire de Droit International (1929) Article: "Aliment" §§ 17-23.

Compare Home Insurance Co. *v.* Dick, 281 U. S. 397.

[25]Compare Cowles *v.* Cowles, 203 App. Div. (N. Y.) 405.

SUPREME COURT OF THE UNITED STATES.

No. 14.—October Term, 1933.

W. A. Yarborough, Petitioner,
vs.
Sadie Yarborough, by her Guardian *ad litem.*
} On Writ of Certiorari to the Supreme Court of South Carolina.

[December 4, 1933.]

Mr. Justice Stone.

I think the judgment should be affirmed.

The divorce decree of the Georgia court purported to adjudicate finally, both for the present and for the future, the right of a minor child of the marriage to support and maintenance, by directing her father to make a lump sum payment for that purpose. More than two years later, after the minor had become a domiciled resident of South Carolina, and after the sum paid had been exhausted, a court of that State, on the basis of her need as then shown, has rendered a judgment directing further payments for her support out of property of the father in South Carolina, in addition to that already commanded by the Georgia judgment.

For present purposes we may take it that the Georgia decree, as the statutes and decisions of the State declare, is unalterable and, as pronounced, is effective to govern the rights of the parties in Georgia. But there is nothing in the decree itself, or in the history of the proceedings which led to it to suggest that it was rendered with any purpose or intent to regulate or control the relationship of parent and child, or the duties which flow from it, in places outside the State of Georgia where they might later come to reside. It would hardly be thought that Georgia, by judgment of its courts more than by its statutes, would attempt to regulate the relationship of parents and child domiciled outside the State at the very time the decree was rendered, and in the face of constitutional doubts which arise here, it is far from clear that its decree is to

be interpreted as attempting to do more than to regulate that relationship while the infant continued to be domiciled within the State. But if we are to read the decree as though it contained a clause, in terms, restricting the power of any other state, in which the minor might come to reside, to make provision for her support, then, in the absence of some law of Congress requiring it, I am not persuaded that the full faith and credit clause gives sanction to such control by one state of the internal affairs of another.[1]

Congress has said that the public records and the judicial proceedings of each state are to be given such faith and credit in other states as is accorded to them in the state "from which they are taken." R. S. §§ 905, 906; 28 U. S. C. A., §§ 687, 688. But this broad language has never been applied without limitations. See *M'Elmoyle* v. *Cohen,* 13 Pet. 312. Between the prohibition of the due process clause, acting upon the courts of the state from which such proceedings may be taken, and the mandate of the full faith and credit clause, acting upon the state to which they may be taken, there is an area which federal authority has not occupied. As this Court has often recognized, there are many judgments which need not be given the same force and effect abroad which they have at home, and there are some, though valid in the state where rendered, to which the full faith and credit clause gives no force elsewhere. In the assertion of rights, defined by a judgment of one state, within the territory of another there is often an inescapable conflict of interest of the two states, and there comes a point beyond which the imposition of the will of one state beyond its own borders involves a forbidden infringement of some legitimate domestic interest of the other. That point may vary with the circumstances of the case, and in the absence of provisions more specific than the general terms of the congressional

[1]It may be assumed for present purposes that the child was sufficiently represented in the Georgia proceedings. But the point is doubtful. See Walder *v.* Walder, 159 La. 231; Graham *v.* Graham, 38 Colo. 453. The reasoning of the opinion of the Court—that since Georgia does not give the child a cause of action it has no property right and need not have been represented—would lead to the conclusion that what was decided in Georgia was something quite different from that which was in litigation and decided in South Carolina; that the child's suit is upon a right afforded only by the law of South Carolina; and that the Georgia suit, giving no similar right but only a right to the mother, could have no effect upon the present litigation.

enactment[2] this Court must determine for itself the extent to which one state may qualify[3] or deny[4] rights claimed under proceedings or records of other states.

More than once this Court has approved the doctrine that a state need give no effect to judgments for conviction of crime or for penalties procured in a sister state, see *Wisconsin* v. *Pelican Insurance Co.*, 127 U. S. 265; *Huntington* v. *Attrill*, 146 U. S. 675; *Finney* v. *Guy*, 189 U. S. 355; see also *Martin* v. *Hunter's Lessee*, 1 Wheat 304, 330, 337.[5] And the intervention of a sister state's judgment will not overcome a local policy against allowing to foreign corporations the use of local courts in settling foreign disputes. *Anglo-American Provision Co.* v. *Davis Provision Co.*, 191 U. S. 373;[6] compare *Kenny* v. *Supreme Lodge of the World, Loyal*

[2]The mandatory force of the full faith and credit clause as defined by this Court may be, in some degree not yet fully defined, expanded or contracted by Congress. Much of the confusion and procedural deficiencies which the constitutional provision alone has not avoided may be remedied by legislation. Cook, Powers of Congress under the Full Faith and Credit Clause, 28 Yale Law Journal, 421; Corwin, The "Full Faith and Credit" Clause, 81 University of Pennsylvania Law Rev. 371; cf. 33 Columbia Law Rev. 854, 866. The constitutional provision giving Congress power to prescribe the effect to be given to acts, records and proceedings would have been quite unnecessary had it not been intended that Congress should have a latitude broader than that given the courts by the full faith and credit clause alone. It was remarked on the floor of the Constitutional Convention that without the extension of power in the legislature, the provision "would amount to nothing more than what now takes place among all Independent Nations". Hunt and Scott, Madison's Reports of the Debates in the Federal Convention of 1787, p. 503. The play which has been afforded for the recognition of local public policy in cases where there is called in question only a statute of another state, as to the effect of which Congress has not legislated, compared with the more restricted scope for local policy where there is a judicial proceeding, as to which Congress has legislated, suggests the Congressional power.

[3]M'Elmoyle *v.* Cohen, 13 Pet. 312.

[4]Grover and Baker Machine Co. *v.* Radcliffe, 137 U. S. 287, 299.

[5]The extent to which the doctrine may be applied to judgments for penalties has not been clearly defined. Leflar, Extrastate Enforcement of Penal and Governmental Claims, 46 Harvard Law Rev. 193; compare 33 Columbia Law Rev. 492, 507. And see People of State of New York *v.* Coe Manufacturing Co., 162 Atl. 872 (N. J.) (New York judgment based on tax claims given full faith and credit); 42 Yale Law Journal, 1131.

[6]See also Weidman *v.* Weidman, 274 Mass. 118; Palmer *v.* Palmer, 265 Mass. 242; 42 Harvard Law Rev. 701.

Order of Moose, 252 U. S. 411.[7] The state of matrimonial domicile may preserve to its own resident his rights in the marriage status where another state has sought to terminate it, without acquiring jurisdiction of his person, *Haddock* v. *Haddock*, 201 U. S. 562, even though terminated within the other state, cf. *Maynard* v. *Hill*, 125 U. S. 190.[8] The full faith and credit clause does not require one state, at the behest of the courts of another, to surrender its powers to decide what criminal penalties it shall impose, to circumscribe, within limits, the classes of disputes to which its courts must give ear,[9] or to protect its residents from undue interference with the marriage relationship.

A statute, record or judgment of one state establishing the right of an illegitimate or adopted child to inherit from his putative parent may be given extra-state effect for many purposes, but it does not establish his right to inherit land in another state. See *Hood* v. *McGehee*, 237 U. S. 611; *Olmstead* v. *Olmstead*, 216 U. S. 386. Parties who have, in one state, litigated the proper construction of a will disposing of realty are not, by the judgment there, concluded in another state where the testator's realty is located. Cf. *Clarke* v. *Clarke*, 178 U. S. 186. Nor will a divorce decree seeking to apportion the rights of the parties to realty be conclusive with respect to land outside the state. *Fall* v. *Eastin*, 215 U. S. 1. The interest of a state in controlling all the legal incidents of real property located within its boundaries is deemed so complete and so vital to the exercise of its sovereign powers of government within its own territory as to exclude any control over them by the statutes or judgments of other states.

It would be going further than this Court has been willing to go in any decision to say that the power of a state to pass judgment

[7]That corporations cannot invoke the privileges and immunities clause does not explain the difference between these two cases. Application of the doctrine of *forum non conveniens*, while more limited when applied to actions based on foreign judgments, is not altogether precluded. 33 Columbia Law Review 492, 502.

[8]But see Beale, Constitutional Protection for Divorce, 19 Harvard Law Rev. 586; Haddock Revisited, 39 Harvard Law Rev. 417; compare Harper, Collateral Attack upon Foreign Judgments, 29 Michigan Law Rev. 661, 679.

[9]Cf. Cole *v.* Cunningham, 133 U. S. 107, with Union Pacific Ry. Co. *v.* Rule, 155 Minn. 302. See 39 Yale Law Journal, 719; cf. Tennessee Coal I. & R. Co. *v.* George, 233 U. S. 354.

upon the sanity of its own citizen could be foreclosed by an earlier judgment of the court of some other state dealing with the same subject matter. Cf. *Gasquet* v. *Fenner*, 247 U. S. 16.

Similarly it has been almost uniformly recognized that a divorce decree which by its terms or by operation of law forbids remarriage of one or both of the parties can have no effect outside the state which rendered it.[10] Jurisdictional requirements being satisfied, the decree is effective to end the marriage for all states, but enforcement of its prohibition against remarriage in another state, even though the parties do not take up their residence there, would infringe upon the interest which every state has to maintain the stability of a union entered into according to the laws of the place of celebration.[11]

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[10]In re Estate of Ommang, 183 Minn. 92; Bauer *v.* Abrahams, 73 Colo. 509; Dudley *v.* Dudley, 151 Iowa 142. Sometimes the state granting the divorce will not recognize the validity of the later marriage, Wilson *v.* Cook, 256 Ill. 460, unless the party had changed his domicile before remarrying, Pierce *v.* Pierce, 58 Wash. 622. Thus the divorce proceedings, on the one hand, and the marriage record, on the other, are denied full credit. See Beale, Laughlin, Guthrie and Sandomire, Marriage and the Domicil, 44 Harvard Law Rev. 501; 16 Minnesota Law Rev. 172. The present case is not distinguished by arguing that in the divorce situation it is a question of faith and credit to be given to a statute and not to judicial proceedings. Goodwin *v.* Goodwin, 158 App. Div. 171, 173. While it is usually a statute that prescribes the disability which is to attach to the divorce, it is the judicial proceedings themselves which are in question as much as in the present case, where the judgment for support is unalterable within the state by virtue of the Georgia statute. Without denying the validity of a marriage in another state, the privileges flowing from marriage may be subject to the local law. State *v.* Bell, 7 Baxt. 9 (Tenn.) (husband and wife of different races may be prohibited from cohabiting within state though lawfully married elsewhere); Restatement of Conflicts of Law, § 181.

[11]Further examples might be referred to. The policy of the state in which the foreign judgment is set up fixes the periods of limitations, and the priority which foreign judgment creditors may have: M'Elmoyle *v.* Cohen, 13 Pet. 312; Cole *v.* Cunningham, 133 U. S. 107, 112. A state may, under some circumstances, deny the authority of foreign officers to deal with things within its territory, see Great Western Mining Co. *v.* Harris, 198 U. S. 561, 576, even though the officer's action took place in the foreign state, Clarke *v.* Clarke, 178 U. S. 186, 194; Hoyt *v.* Sprague, 103 U. S. 613, 631. The limitation upon the doctrine of such cases which this Court has imposed in holding that certain statutory successors to corporations in a foreign state shall have the privilege of maintaining suit, Converse *v.* Hamilton, 224 U. S. 243,

Whatever view may be held of the particular restrictions upon the operation of the full faith and credit clause in these cases, the validity of the principle upon which they rest has never been denied. Its validity is likewise recognized in those cases where this Court has held that the Fourteenth Amendment denies to a state the power of unduly extending its authority beyond its own borders, by the mere expedient of rendering a judgment against one of whose person or property it has acquired jurisdiction. *Head* v. *New York Life Insurance Co.*, 234 U. S. 149; *Home Insurance Co.* v. *Dick*, 281 U. S. 397. Just as due process of law will not permit a state, by its judgment, to inflict parties "with a perpetual contractual paralysis" which will prevent them from altering outside the state their contracts or ordinary business relations entered into within it, *Head* v. *New York Life Insurance Co., supra*, 161, so full faith and credit does not command that the obligations attached to a status, because once appropriately imposed by one state, shall be forever placed beyond the control of every other state, without regard to the interest in it and the power of control which the other may later acquire. See *Bradford Elec. Light Co.* v. *Clapper*, 286 U. S. 145, 157, n. 7. Whatever difference there may be between holding that a judgment is invalid under the Fourteenth Amendment because it is "extra-territorial", and in holding that it is not entitled to full faith and credit although it does not infringe the Fourteenth Amendment, is one of degree, or of a difference in circumstances which may prevent the operation of the latter provision of the Constitution. The Georgia judgment with which we are now concerned does not infringe the Fourteenth Amendment, for Georgia had "jurisdiction" of the parties

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Bernheimer *v.* Converse, 206 U. S. 526, illustrate the appropriate function of this Court in balancing the interests of local and foreign sovereign. The extra-state force given to a voluntary assignment in receivership, as compared with the more restricted effect of an assignment which is commanded by court order, further demonstrates the nature of the full faith and credit mandate. See Cole *v.* Cunningham, 133 U. S. 107, 129; Catlin *v.* Wilcox Silver-Plate Co., 123 Ind. 477, 482; Zacher *v.* Fidelity Trust Co., 106 Fed. 593; Laughlin, Extra-territorial Powers of Receivers, 45 Harvard Law Rev. 429, 461 ff. The problems in relation to the extra-state consequences of the dissolution of a corporation are becoming important. Compare Clark, Receiver *v.* Williard et al., Trustees, Supreme Court of Montana, decided April 1, 1933, cert. granted October 23, 1933, with National Surety Co. of N. Y. *v.* Cobb, 66 F. (2d) 323, cert. den., November 13, 1933.

and subject matter at the time its judgment was rendered. The possibility of conflict of the Georgia judgment with the interest of South Carolina first arose when the minor transferred her domicile to South Carolina, long after the Georgia judgment was given.

The question presented here is whether the support and maintenance of a minor child, domiciled in South Carolina, is so peculiarly a subject of domestic concern that Georgia law can not impair South Carolina's authority. The subject matter of the judgment in each state is the duty which government may impose on a parent to support a minor child. The maintenance and support of children domiciled within a state, like their education and custody, is a subject in which government itself is deemed to have a peculiar interest and concern. Their tender years, their inability to provide for themselves, the importance to the state that its future citizens should be clothed, nourished and suitably educated, are considerations which lead all civilized countries to assume some control over the maintenance of minors.[12] The states very generally make some provision from their own resources for the maintenance and support of orphans or destitute children, but in order that children may not become public charges the duty of maintenance is one imposed primarily upon the parents, according to the needs of the child and their ability to meet those needs. This is usually accomplished by suit brought directly by some public officer,[13] by the child by guardian or next friend, or by the

[12]This control is particularly important in the case of the children of divorced couples. They are usually young; in Maryland over 60% are under ten years of age when divorce occurs. Divorces are often not contested and the intervention of a disinterested judge is frequently nominal. Allowances for children in the divorce court are typically small. Marshall and May, The Divorce Court, 31, 79-80, 82, 226-231, 323.

[13]Frequently a criminal statute provides as an alternative penalty for non-support of a child that the guilty party post a bond or otherwise provide for the future support of the child. Such a statute exists in South Carolina, § 1123 South Carolina Code, 1932, cf. Mason's 1927 Minn. Stat. § 10136. The state's special interest in securing the father's liability is emphasized not only by the frequency of penal measures, but also by the fact that in some places a statute is necessary before any suit can be maintained against the father. Huke *v.* Huke, 44 Mo. App. 308; Rawlings *v.* Rawlings, 121 Miss. 140; cf. Hooten *v.* Hooten, 168 Ga. 86; see Madden, Domestic Relations, 383. Contra: Doughty *v.* Engler, 112 Kan. 583; cf. Craig *v.* Shea, 102 Neb. 575. Likewise notable is the extensive repudiation of the view that the duty to support is correlative with the right to custody and services. See Jacobs, Cases on Domestic Relations, 772.

mother, against the father for maintenance and support.[14] The measure of the duty is the need of the child and the ability of the parent to meet those needs at the very time when performance of the duty is invoked. Hence, it is no answer in such a suit that at some earlier time provision was made for the child, which is no longer available or suitable because of his greater needs, or because of the increased financial ability of the parent to provide for them,[15] or that the child may be maintained from other sources.[16]

In view of the universality of these principles it comes as a surprise that any state, merely because it has made some provision for the support of a child, should, either by statute or judicial decree, so tie its own hands as to foreclose all future inquiry into the duty of maintenance however affected by changed conditions.[17]

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[14]The duty of support is also enforced through entertaining suits by third parties to recover for necessaries furnished. However, conflicting policies make this an unsatisfactory method, for the courts seek to discourage wrongful action on the part of wives or minors in leaving their homes and have consequently gone to some lengths in refusing to impose liability on the father unless he has been at fault in breaking up the home. Baldwin *v.* Foster, 138 Mass. 449; see Mihalcoe *v.* Holub, 130 Va. 425. Contra: Maschauer *v.* Downs, 289 Fed. 540; see Birdsong *v.* Birdsong, 182 Ky. 58; cf. Sanger *v.* Trammell, 198 S. W. 1175 (Tex.).

[15]See State *v.* Miller, 111 Kan. 231; Walder *v.* Walder, 159 La. 231; People *v.* Miller, 225 Ill. App. 150; Hilliard *v.* Anderson, 197 Ill. 549, 552-553; see also State *v.* Moran, 99 Conn. 115; McCloskey *v.* St. Louis Union Trust Co., 202 Mo. App. 28; State *v.* Langford, 90 Ore. 251. An attempt to relieve himself of liability by a settlement or other contract will normally be ineffectual. See Harper *v.* Tippie, 21 Ariz. 41; Edleson *v.* Edleson, 179 Ky. 300; Michaels *v.* Flach, 197 App. Div. 478, aff'g. 114 Misc. 225; Van Roeder *v.* Miller, 117 Misc. 106; cf. Henkel's Estate, 13 Pa. Super. Ct. 337. Higher education is properly an object of a suit for an increased allowance. Cf. Esteb *v.* Esteb, 138 Wash. 147; Hilliard *v.* Anderson, 197 Ill. 549; Commonwealth ex rel. Smith *v.* Gilmore, 95 Pa. Super. Ct. 557; Sisson *v.* Schultz, 251 Mich. 553; Moscow *v.* Marshall, 271 Mass. 302.

[16]Hunter *v.* State, 10 Okla. Cr. 119; State *v.* Waller, 90 Kan. 829; Cruger *v.* Heyward, 2 Desaus. 94, 110 (S. C.); State *v.* Constable, 90 W. Va. 515; Gully *v.* Gully, 111 Tex. 233; cf. Taylor *v.* San Antonio Gas & Elec. Co., 93 S. W. 674 (Tex.). When suit is instituted by the wife considerations of equity as between husband and wife may obtrude, McWilliams *v.* Kinney, 180 Ark. 836; Fulton *v.* Fulton, 52 Ohio St. 229, unless the wife is unable to support the child, State *v.* Miller, 111 Kan. 231; White *v.* White, 169 Mo. App. 40.

[17]Georgia seems to be the only state to do so. II Vernier, Family Laws, 196 ff. A similar attempt by the courts of another state has been held null and void and subject to collateral attack. See Walder *v.* Walder, 159 La. 231.

Even though the Constitution does not deny to Georgia the power to indulge in such a policy for itself,[18] it by no means follows that it gives to Georgia the privilege of prescribing that policy for other states in which the child comes to live.[19] South Carolina has adopted a different policy. It imposes on the father or his property located within the state the duty to support his minor child domiciled there. It enforces the duty by criminal prosecution[20] and also permits suit by the minor child maintained by guardian *ad litem*. The measure of the duty is the present need of the child and the ability of the parent to provide for it. In this case the suit was begun by attachment of the father's property in South Carolina and by personal service of process upon him there. The court found that the lump sum paid for support of the child under the Georgia decree had been expended; that she

[18]Cf. Laumeier *v.* Laumeier, 308 Mo. 201. And there could be no complaint if South Carolina chose to follow the Georgia determination. Cf. Laumeier *v.* Laumeier, 242 N. Y. 501.

[19]In the custody cases a very similar situation is presented. As conventionally stated the rule has been that the most the full faith and credit clause can require is that the prior ruling shall be deemed conclusive in the absence of an asserted change in circumstances. See Calkins *v.* Calkins, 217 Ala. 378; cf. People ex rel. Allen *v.* Allen, 105 N. Y. 628, aff'g 40 Hun. 611. In one state a distinction has been drawn between personal rights of the parents and the interest of the state in the welfare of the child: unless there is an allegation that the best interest of the child requires a change in custody the parties will be bound. Wear v. Wear, 130 Kan. 205; see In re Bort, 25 Kan. 308, 309. Another state gives credit to the extent that prior determinations of fact are deemed incontrovertible, but exercises an independent judgment of the conclusion to be drawn from them. Commonwealth ex rel. Rogers *v.* Daven, 298 Pa. 416. In no case has there been such an abject surrender as this Court now requires of South Carolina. A tendency may be discerned to give conclusive force to the determinations of the state wherein the child resides, as long as that residence continues, but that upon change of residence the questions will be open in the state to which the change is made. Ex parte Erving, 157 Atl. 161, 164 (N. J.); Milner *v.* Gatlin, 139 Ga. 109, 113; Steele *v.* Steele, 152 Miss. 365; In re Alderman, 157 N. C. 507; Griffin *v.* Griffin, 95 Ore. 78, 84; In re Groves, 109 Wash. 112, 114; cf. Barnes *v.* Lee, 128 Ore. 655; see 80 University of Pennsylvania Law Rev. 712; 81 University of Pennsylvania Law Rev. 970; Restatement of Conflict of Laws, §§ 153, 156. Reasonable latitude should be preserved to states where the child is found to take temporary police measures even though contrary to the terms of a decree of the state of residence. Cf. Hartman *v.* Henry, 280 Mo. 478.

[20]Supra, note 13.

was justifiably residing with her mother in South Carolina rather than with her father in Georgia; that she was then without financial resources and that considering her station in life and the circumstances of her father, an allowance for the future of $50.00 a month for her education, maintenance and support would be fair and just, and this amount was ordered to be paid for that purpose from the attached property.

The opinion of this Court leaves it uncertain whether it is thought that the Constitution commands that the duty of support prescribed by Georgia, the domicile of the father, shall be dominant over that enjoined by South Carolina, the domicile of the child, in any event, or only after the duty has been defined by a judgment of Georgia.[21] It is attested by eminent authority that the Fourteenth Amendment, at least, does not prevent the state of the child's domicile from imposing the duty, *Restatement of Conflict of Laws,* § 498A,[22] a view confirmed by the uniform rulings that the father is liable to the criminal process of the state of the child's residence, though before, and at all times during his failure to conform to the duty demanded by that state, he has been domiciled elsewhere. *Kansas* v. *Wellman,* 102 Kan. 503; *Ohio* v. *Sanner,* 81 Ohio St. 393. The Fourteenth Amendment does not enable a father, by the expedient of choosing a domicile other than the state where the child is rightfully domiciled, to avoid the duty which that state may impose for support of his child. The reason seems plain. The locality of the child's residence must see to his welfare. While it might be more convenient for creditors of the father to look to the law of his residence as fixing all his obligations, it would seem that the compelling interest in the welfare of children, to which performance of the duties of parentage is a necessary incident, outweighs commercial convenience; the more so where, as in this case, the obligation is to be satisfied from the father's property within the state of the child's domicile.

The conclusion must be the same when the issue is that of the credit to be given the prior Georgia judgment. Whatever may be said of the local interest which was deemed controll-

[21] Cf. Home Insurance Co. *v.* Dick, 281 U. S. 397, with Kryger *v.* Wilson, 242 U. S. 171.

[22] "A state may impose upon one person a duty to support another person if 1. the person to be supported is domiciled within the state, and the person to support is within the jurisdiction of the state; . . ."

ing in those cases in which this Court has denied to a state judgment the same force and effect outside the state as is given to it at home, it would not seem open to serious question that every state has an interest in securing the maintenance and support of minor children residing within its own territory so complete and so vital to the performance of its functions as a government, that no other state could set limits upon it. Of that interest, South Carolina is the sole mistress within her own territory. See *Hood* v. *McGehee, supra,* 615. Even though we might appraise it more lightly than does South Carolina, it is not for us to say that a state is not free within constitutional limitations, to regard that interest as fully as important and as completely within the realm of state power as the legal incidents of land located within its boundaries, or of a marriage relationship, wherever entered into but of which it is the domicile, or its power to pass upon the sanity of its own residents, notwithstanding the earlier pronouncements of the courts of other states.

The case of *Sistare* v. *Sistare,* 218 U. S. 1, seems to have no bearing on the question presented here. There the plaintiff in error procured in the courts of New York a judgment of judicial separation awarding alimony for herself and child at a weekly rate. Leave was given to her by the judgment to apply for such orders as might be necessary for its enforcement or her protection. Her husband failed to pay the alimony, and she brought suit against him in the courts of Connecticut for the past due alimony which had accrued under the judgment. Upon an examination of the New York law this Court concluded that the judgment was final as to all past alimony and that the effect of it was to create a debt in New York, collectible there by execution, for all past due installments, and it held that the full faith and credit clause required the Connecticut courts to render a like judgment. The Court was careful to distinguish the case from one where the suit was brought to compel the payment of alimony in the future, see p. 16, compare *Lynde* v. *Lynde,* 181 U. S. 183, 187. The record discloses that neither party to the suit was domiciled in Connecticut. The wife relied on the New York judgment, as did the husband, whose only defenses were based on its effect in New York as not there conferring on her an unqualified right to the alimony. The Court was not asked and did not assume to pass upon the duty of

the husband to support the wife or children independently of the New York judgment. No question whether the enforcement of the New York decree in Connecticut would infringe the authority of Connecticut to regulate or control the incidents of a marriage, one or both of the parties to which were then domiciled in the state, was either raised or considered.

The decision in *Sistare* v. *Sistare* lends no support to the contention that South Carolina can be precluded by a judgment of another state from providing for the future maintenance and support of a destitute child domiciled within its own borders out of the property of her father also located there. Here the Georgia decree did not end the relationship of parent and child, as a decree of divorce may end the marriage relationship. Had the infant continued to reside in Georgia, and had she sought in the courts of South Carolina to compel the application of property of her father, found there, to her further maintenance and support, full faith and credit to the Georgia decree applied to its own domiciled resident might have required the denial of any relief. Cf. *Bates* v. *Bodie*, 245 U. S. 520; *Thompson* v. *Thompson*, 226 U. S. 551. But when she became a domiciled resident of South Carolina a new interest came into being, the interest of the State of South Carolina as a measure of self preservation to secure the adequate protection and maintenance of helpless members of its own community and its prospective citizens. That interest was distinct from any which Georgia could conclusively regulate or control by its judgment even though rendered while the child was domiciled in Georgia. The present decision extends the operation of the full faith and credit clause beyond its proper function of affording protection to the domestic interests of Georgia and makes it an instrument for encroachment by Georgia upon the domestic concerns of South Carolina.

Mr. Justice CARDOZO concurs in this opinion.